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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., *et al.*,
Appellants,

vs.

JIM EDGAR, Secretary of the State of Illinois, *et al.*,
Appellees,

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

Does a state statute which prohibits the sale of automobiles by licensed dealers on Sundays, and whose declared intent and effect is to restrict competition for the benefit of certain competitors, satisfy the constitutional requirement that legislation serve a "legitimate" public purpose?

Can a state Sunday closing statute be justified as providing a day of rest where it applies only to benefit salesmen at licensed automobile dealerships?

LIST OF ALL PARTIES BELOW

Appellants, who were appellees in the Supreme Court of Illinois, are FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., an Illinois corporation, CELOZZI-ETTLESON CHEVROLET, INC., an Illinois corporation, and JOHN BYBEE CHRYSLER-PLYMOUTH, INC., an Illinois corporation. [1] Appellees are JIM EDGAR, Secretary of the State of Illinois, CHICAGO AUTOMOBILE TRADE ASSOCIATION, an Illinois corporation, and THE ILLINOIS NEW CAR AND TRUCK DEALERS ASSOCIATION, an Illinois corporation, who were appellants in the court below, and JOSEPH W. LONGO, who was an appellee in the court below. No other parties appeared in the court below.

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[1] Appellant corporations have no parent companies, subsidiaries, or affiliates.

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ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The Opinion of the Supreme Court of Illinois, which appears as Appendix A hereto, is reported at 102 Ill.2d 1, 464 N.E.2d 275 (1984). That Court's denial of rehearing on June 4, 1984 and its stay of mandate appear in Appendix C.

The Order of the Circuit Court of Cook County, Illinois, and a transcription of the court's remarks from the bench, reconstructed by counsel from notes supplied by the court for such purpose, appear as Appendix B hereto and are unreported.

STATEMENT OF JURISDICTIONAL GROUNDS

Appellants Fireside Chrysler-Plymouth, Mazda, Inc., Celozzi-Ettleson, Chevrolet, Inc., and John Bybee Chrysler-Plymouth, Inc., appeal from the final judgment of the Illinois

Supreme Court, dated April 10, 1984, holding that Illinois Revised Statutes, ch. 95½, § 5-106 (1982 Supp.) is constitutional. The denial of appellants' petition for rehearing was filed on June 4, 1984. This appeal is being docketed in this Court within 90 days from the denial of rehearing below. A notice of appeal to this Court was duly filed in the Supreme Court of Illinois on August 13, 1984. This Court's jurisdiction was invoked pursuant to 28 U.S.C. § 1257(2)(1982).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment, United States Constitution:

> No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Illinois Revised Statutes, ch. 95½, § 5-106 (1982 Supp.):

> No person licensed under Sections 5-101 and 5-102 may keep open, operate, or assist in keeping open or operating any established place of business for the purpose of buying, selling, bartering or exchanging, or offering for sale, barter or exchange, any motor vehicle, whether new or used, on the first day of the week, commonly called Sunday; provided, that this Section does not apply to the opening of an established place of business on Sunday for the sale of petroleum products, tires, or repair parts and accessories, or for the purpose of supplying such services as washing, towing or wrecking or for the purpose of participating in a new vehicle show or display participated in by two or more, franchised dealers who have been granted a supplemental license for such purpose by the Secretary of State, or a dealer only licensed under Section 5-101 and 5-102 to sell motorcycles, motor driven cycles or motorized pedacycles, or for the purpose of offering for sale manufactured housing.

STATEMENT OF THE CASE

Appellants are licensed automobile dealers in the suburban Chicago area who desire to conduct business on Sundays. Prior to enactment of the statute whose constitutionality is challenged in this appeal, such Sunday sales were uninhibited. Appellants operate on Sundays and have developed a pattern of sales whereby a substantial portion of their revenues is derived from such Sunday operation. Other licensed automobile dealers are free to operate, or not to operate, seven days a week, as each individual sees fit.

For some time, a group of licensed automobile dealers has opposed the practice of Sunday sales. Although all were free to remain closed, competitive pressure was generated by dealers, including appellants, who chose to operate on Sundays. Faced by this competitive pressure, and unwilling to meet it, the group of dealers launched an effort to be protected by a legislative prohibition against Sunday sales of automobiles. Acting through trade associations, two of which intervened as defendants below and are appellees in this Court, these automobile dealers took their fight from the marketplace to the Illinois General Assembly.

The group of dealers' battle for the right to keep others from doing business on Sunday succeeded with the passage of Public Act 82-788; Ill. Rev. Stat. ch. 95½, § 5-106 (1982 Supp.). That law, an amendment to the Illinois Vehicle Code, prohibits licensed automobile dealers from operating on Sundays for the purpose of buying or selling new or used cars. It is revealing that the only penalty imposed by the bill on a licensed dealer who operates on Sunday is the possible revocation of his license. *See* Ill. Rev. Stat. ch. 95½, § 5-501 (1982 Supp.).

On July 13, 1982 Governor James R. Thompson signed Public Act 82-788 into law. In the brief message issued at the time of the bill's signing, Governor Thompson identified as reasons for the Sunday prohibition a desire to afford automobile salesmen at licensed dealerships a day of rest, or, "alternatively," the reduction of automobile dealers' overhead costs. *See* App. I. Observing that support for the prohibition had

come from representatives of certain automobile retailers themselves, the Governor stated that he "would ordinarily look, and act, with disfavor on a bill of this sort." *Id.*

Governor Thompson also acknowledged in his message that substantial constitutional questions were raised by prohibiting only the sale of automobiles on Sunday. "And while the matter is not free from doubt," he wrote, ". . . the constitutional issue involved is at least an open one." *Id.* This concern was based not upon a speculative legal analysis, moreover, but upon the fact that a nearly identical prohibition of retail automobile sales on Sunday, enacted as a penal measure, was declared unconstitutional by the Supreme Court of Illinois in *Courtesy Motor Sales* v. *Ward,* 24 Ill. 2d 82, 179 N.E. 2d 692 (1962).

On July 14, 1982 appellants filed suit in the Circuit Court of Cook County against Jim Edgar, the Secretary of State of Illinois, seeking a declaration that the automobile dealer Sunday closing statute was unconstitutional. *See* App. E. As grounds for their suit appellants asserted that the statute was arbitrary and constituted unlawful discrimination, thus depriving them of the equal protection of the laws and other rights secured by the United States Constitution. Violations of the Constitution of the State of Illinois were also alleged.

On November 23, 1982 two automobile trade associations, the Chicago Automobile Trade Association and the Illinois New Car and Truck Dealers Association, intervened as defendants in support of the Sunday closing statute. The trade associations, appellees in this Court, sought intervention to protect what they characterized remarkably as "their rights and privileges to a Sunday Closing law." *See* App. F. Joseph W. Longo, a consumer, intervened as a plaintiff on August 11, 1982.

Appellants moved for summary judgment on the undisputed material fact that their businesses rely heavily upon Sunday operation and that if the statute were enforced they would sell "substantially fewer automobiles." *See* App. G. Appellee Edgar also stated that he intended to enforce the law against any automobile dealer that remained open on a Sunday. *See* App. H. Defendant-Appellees moved to dismiss for want of an actual controversy.

On December 22, 1982, following full briefing, Judge Joseph M. Wosik denied the motions to dismiss and granted appellants' motion for summary judgment. Judge Wosik's written Order concluded that the Illinois statute violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and constituted "special legislation" in violation of the Constitution of the State of Illinois. *See* App. B.[2] An appeal was taken to the Supreme Court of Illinois and on April 10, 1984 that court reversed. *See* App. A, *Fireside Chrysler-Plymouth, Mazda, Inc.* v. *Edgar,* 102 Ill.2d 1, 464 N.E.2d 275 (1984).

The Illinois Supreme Court in *Fireside* rejected appellants' argument that the statute unreasonably prohibited licensed automobile dealers from operating on Sunday and discriminated arbitrarily against them. The truncated constitutional analysis contained in the four-page majority opinion refers to no federal cases discussing the requirements of the Due Process or Equal Protection Clauses. Moreover, the court did not once pause to discuss the statute's purposes, either as articulated by Governor Thompson or as determined upon an independent analysis.

Justices Simon and Underwood dissented, arguing that the majority's constitutional analysis failed to satisfy the minimal requirements of judicial review established by the Supreme Court of the United States. "The question is not simply whether automobile dealers may be classified separately for the purposes of legislation. It is whether they may be classified separately for the purpose of a Sunday closing law." App. A at A-7, *quoting Courtesy Motor Sales* v. *Ward,* 24 Ill.2d at 87; 179 N.E.2d at 694-95. The requirement that there be a nexus between a legislative classification and a legitimate state interest, the Justices observed, could not be satisfied given the

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[2] In the absence of a reporter on December 22, the court's remarks from the bench were not transcribed. The following day counsel reconstructed the remarks from notes supplied by the court for that purpose. Counsel's transcription was part of the record on appeal to the Supreme Court of Illinois and accordingly appears in Appendix B hereto.

"obviously improper legislative purpose" of suppressing competition which the record revealed was served by the statute. App. A at A-12.

Appellants' application for rehearing was denied on June 4, 1984 and the court subsequently stayed its mandate pending appeal. A Notice of Appeal was timely filed with the Illinois Supreme Court and the present direct appeal was taken pursuant to 28 U.S.C. § 1257(2)(1982). *See* Apps. C and D.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I. THE SUPREME COURT OF ILLINOIS APPLIED THE WRONG LEGAL STANDARD IN UPHOLDING THE CONSTITUTIONALITY OF THE STATUTE

In determining that the automobile dealer Sunday closing statute was constitutional, the Supreme Court of Illinois employed a defective and prejudicial legal analysis. The court in its brief opinion failed to address any of the factors which must be considered in determining whether a statute satisfies the minimal requirements of rationality imposed by the Constitution. At the very least, a legislative classification will survive a challenge under the Equal Protection Clause only if it "rationally furthers a legitimate state purpose." *Zobel* v. *Williams,* 457 U.S. 55, 60 (1982). To satisfy the Due Process Clause, an essentially identical requirement of rationality and legitimacy of purpose must at a minimum be met. *See Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 491 (1955). Notwithstanding these unambiguous constitutional criteria, neither the legitimacy of Illinois' objective in enacting the automobile dealer Sunday closing statute, nor whether the Act was rationally related to that end, was even considered, let alone resolved, in the opinion presently before the Court on appeal.

The Illinois Supreme Court's opinion at first addresses the statute from the standpoint of the state's police power, observing correctly that the Illinois legislature was entitled to "enact and enforce laws for the protection of the health, peace, morals,

or general welfare of the people. *Powell* v. *Pennsylvania,* 127 U.S. 678." App. A at A-5, *quoting Fenske Brothers, Inc.* v. *Upholsterer's Union,* 358 Ill. 239, 251; 193 N.E. 112 (1934), *cert. denied,* 295 U.S. 734 (1935). Having posed the constitutional question in terms of the legitimate state purposes for which legislation may be enacted, however, the Court resolved the case at bar with reference to an entirely different inquiry. First, it observed that the Illinois General Assembly had in recent years passed "a number of statutes" pertaining to automobile dealers. App. A at A-5. These statutes, the Court inferred without discussion, "demonstrate a legislative purpose to regulate certain aspects of the business of selling automobiles in a manner different from other retail enterprises." [3] *Id.*

As the second step in reaching its conclusion, the court asserted that Illinois' regulation of automobile dealers for some purposes made it reasonable for the state to regulate them for any purpose. Solely because the Sunday closing statute was enacted as an amendment to the Illinois Vehicle Code, the Act was deemed *ipso facto* "part of the regulatory scheme" relating to automobile dealers and hence constitutional. Because a legislature is generally free to regulate automobile dealers in the public interest, in other words, the court expressly declined to scrutinize the only aspect of the regulation under review. *Id.*

The judgment of the Illinois Supreme Court is deficient in at least two respects. In assuming without explanation only that the automobile dealer Sunday closing statute was part of a larger regulatory scheme, the court abdicated its duty to ensure that the statute under review itself served a legitimate state purpose. Moreover, the court's opinion amounts to a holding that amendments to the Illinois Vehicle Code of whatever substance are constitutional *per se.* Such token judicial review is a rubber stamp of legislative action repugnant to the requirements of constitutional analysis as articulated by this Court.

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[3] Indeed, the presence of the new regulations, none of which relate to the operation of licensed dealerships on Sunday, was apparently the sole basis for the court's ignoring its prior resolution of an essentially identical legal question in *Courtesy Motor Sales.*

II. THE ILLINOIS STATUTE IS UNCONSTITUTIONAL WHEN VIEWED AS AN ECONOMIC REGULATION

A. The Statute Serves No Legitimate State Purpose

The purported economic basis for the prohibition against selling automobiles on Sunday does not represent a legitimate state purpose and cannot support the Act's constitutionality. As Governor Thompson himself observed in signing the bill into law, the sole economic aim of the statute is to reduce certain automobile dealers' overhead costs, not in order that savings could be passed on to the consumer, but to increase the dealers' profits. This is restraint of trade for its own sake, for the sole and exclusive benefit of those competitors who wish not to work on Sundays and who seek to avoid the competitive consequences of their election not to do so.

No legitimate public purpose can rationally be attached to the Illinois statute. The ability of Illinois residents to purchase cars seven days-a-week, which in itself could not possibly be considered in conflict with the public interest, is the *voluntary* response of automobile dealers to competitive conditions. Any dealer who wishes to remain closed on Sunday, to reduce overhead costs or for any other reason, is free to do so. The sole targets of the statute are thus dealers, like appellants, who find it desirable to open for business on Sunday and take their chances in the marketplace. The Illinois statute prevents such competition intentionally and exclusively to benefit those who are not so inclined and who seek government protection to avoid the consequences.[4] The private pattern of sales among automobile dealers in response to competition is a private, not public, interest, and the state of Illinois has no legitimate purpose in seeking to alter that pattern solely to benefit a politically powerful segment of the market.

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[4] It is worth emphasizing that the narrow scope of the Illinois statute tracks the competitive interests of those who urged its passage. The prohibition against Sunday purchases and sales of automobiles extends only to *licensed* dealers and established places of business. It does not forbid such transactions generally on Sunday or prevent them from occuring even in

(footnote continues)

Moreover, the prohibition against Sunday sales of automobiles is opposed to the stated public policies both of the United States and the State of Illinois. The federal antitrust and fair trade laws establish a norm of free competition that is in irreconcilable conflict with the purpose of the Illinois statute.[5] *See, e.g., United States* v. *American Building Maintenance Industries,* 422 U.S. 271, 277 (1975); *Fortner Enterprises* v. *United States Steel Corp.,* 394 U.S. 495, 502 (1969). Illinois has comparable laws whose purpose is to preserve and enhance competition within its own borders. *See* the Illinois Antitrust Act, Ill. Ann. Stat. ch. 38, § 60-1 *et seq.* (Smith-Hurd 1984-85 Supp.). As this Court has observed, "the statutory policy [of the Sherman Act] precludes inquiry into the question whether competition is good or bad." *National Society of Professional Engineers* v. *United States,* 435 U.S. 679, 695 (1978). These strong and settled policies in favor of increased competition demonstrate and dramatize the fact that the Illinois statute is designed for an illegitimate purpose.[6]

B. The Due Process and Equal Protection Clauses Require That Legislative Acts Serve Legitimate Governmental Interests

Even in the area of social and economic legislation, where the most deferential standard of review is typically applied, this Court has without exception required state legislative acts to serve a legitimate and clearly articulable public purpose in order to be held constitutional. *See Zobel* v. *Williams,* 457 U.S.

(footnote continued)

quantity at events, such as flea markets and swap meets, taking place on that day. Similarly, the statute expressly excludes dealers of motorcycles or motor homes from its prohibition, and does not apply to participation in licensed auto shows taking place on Sundays.

[5] Under the proper circumstances, the federal policy to promote competition may itself compel preemption of an anticompetitive state statute. *See Rice* v. *Norman Williams Co.,* 458 U.S. 654 (1982).

[6] This, of course, is not to say that a legislature is forbidden from affecting or even restricting competition in order to serve an independent and legitimate public interest. *See* Part II.B, *infra.* It is the absence of any legislative purpose other than a naked and discriminatory restraint of trade which so distinctively characterizes the Illinois statute in this case.

55 (1982). Equal protection and due process challenges have been rejected only after the Court has searched for and found a substantial and legitimate governmental interest which the statute could reasonably be presumed to be serving. *See, e.g., Exxon Corp.* v. *Governor of Maryland,* 437 U.S. 117, 124-25 (1978)(state law prohibiting petroleum producers and refiners from operating their own gas stations reasonably based upon view that law would increase the "competitiveness of the retail market"); *City of New Orleans* v. *Dukes,* 427 U.S. 297, 303 (1976)(city ordinance permitting only long-serving pushcart vendors in French Quarter to continue in business upheld as aiming to enhance the area's "tourist-oriented charm" and economic vitality). *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 487 (1955)(state law restricting practice of optometry upheld as legislature could reasonably have believed that it was necessary to promote preventative and remedial medical care).[7]

Because statutes are required to serve a legitimate state purpose, it follows that an act is unconstitutional where, as here, the legislature's purpose is affirmatively illegitimate. *See, e.g., Zobel* v. *Williams,* 457 U.S. at 63. The Due Process and Equal Protection Clauses exist not merely, or even mainly, to forbid arbitrary legislative acts and classifications. Rather, they were intended and have been applied to protect individuals and groups from being singled out for discriminatory treatment where no public interest is served. *See United States Department of Agriculture* v. *Moreno,* 413 U.S. 528, 534 (1973). Such is the case with the Illinois statute, whose sole purpose and

[7] Perhaps the greatest deference is paid to legislatures where a process of reasoned line-drawing must occur to accommodate conflicting claims on limited resources. *See, e.g., United States Railroad Retirement Board* v. *Fritz,* 449 U.S. 166 (1980); *Dandridge* v. *Williams,* 397 U.S. 471 (1970); *Jefferson* v. *Hackney,* 406 U.S. 535 (1972). *See also Jimenez* v. *Weinberger,* 417 U.S. 628, 633-34 (1974). No such constraints operated upon the Illinois legislature in connection with the automobile dealer Sunday closing law. Moreover, even where such deference is accorded in light of the reality of limited funds, the line drawn by the legislature must itself be found defensible as reflecting a coherent statement of the public interest. *See, e.g., Fritz* at 178; *Hackney* at 549.

effect is to discriminate against dealers who wish to operate on Sunday in order that those who do not will benefit.

The private redistributional purpose of the Illinois automobile dealer Sunday closing statute is a demonstrably unconstitutional basis for legislation. Since at least the time of Justice Chase's statement in *Calder* v. *Bull,* 3 U.S. (3 Dall.) 386, 388 (1798), that a legislature could not constitutionally enact a law that "takes property from A. and gives it to B.," this Court has required a legitimate public purpose to exist before such a taking could proceed. As recently as last term, the Court reaffirmed the principle that, irrespective of the payment of compensation, "one person's property may not be taken for the benefit of another private person without a justifying public purpose." *Hawaii Housing Authority* v. *Midkiff,* 104 S. Ct. 2321, 2329 (1984), *quoting Thompson* v. *Consolidated Gas Corp.,* 300 U.S. 55, 80 (1937). The question whether a public purpose has been served is a judicial one.[8] *See Cincinnati* v. *Vester,* 281 U.S. 439, 446 (1930)(Hughes, C.J.). Where a legislative act is found to serve no such purpose, where it is a naked redistribution of wealth among private individuals for private purposes, constitutional guarantees have been transgressed and the Act must be declared invalid.

The patent unconstitutionality of the statute is perhaps rendered less obvious by its use of a familiar measure—Sunday closing—in an unfamiliar economic context. The perception is easily remedied by considering other measures which, like the automobile Sunday dealer closing statute, would seek to reduce companies' overhead costs by eliminating competition among them. If the Illinois statute were constitutional, so would an act limiting the commission paid to salesmen or the sales volume a licensed automobile dealer could achieve in a day, a week, or a year. Similarly, an act prohibiting dealerships from occupying

[8] In *Hawaii Housing Authority* a public use was found by the Court in Hawaii's attempt to remedy a "malfunctioning" land market which resulted in "the social and economic evils of a land oligopoly." 104 S. Ct. at 2330. Such purpose constituted a "classic exercise of a State's police power" and thus was sufficient to support the statutory scheme from attack based upon the Just Compensation Clause of the Fifth Amendment, made applicable to the states through the Fourteenth Amendment.

choice, expensive locations or using more expensive forms of advertising, such as television or radio, would be perfectly proper if a legitimate state purpose were to reduce an industry's overhead simply to aid some competitors in achieving increased profits. All such restraints of trade would be unconstitutional without a justifying purpose *independent* of the restraint.

III. THE ILLINOIS STATUTE IS UNCONSTITUTIONAL WHEN VIEWED AS PROVIDING A DAY OF REST FOR AUTOMOBILE SALESMEN

An "alternative" basis for the Illinois statute is said to be to provide salesmen at licensed automobile dealerships with a day of rest. With this purported and unprecedented basis the Illinois statute attempts to tap into the mainstream of "Sunday closing law" decisions which hold that a legitimate state interest is served by attempting to provide a day of repose for the community as a whole. Where only a single trade is subject to the Sunday prohibition, however, no common benefit stands to be gained and no legitimate public purpose is served by the statute. There exists no rational basis to single out licensed automobile dealers from among all businesses for Sunday closing, and the prohibition is therefore unconstitutional.[9]

An analysis of the constitutionality of statutes purporting to provide a day of rest must begin with *McGowan* v. *Maryland,* 366 U.S. 420 (1961), and companion cases. The Court in *McGowan* held constitutional a Maryland statute which, with some exceptions, prohibited all business, labor, and commerce on Sunday. Claims that the Sunday closing statute was unconstitutional as respecting the establishment of religion and prohibiting the free exercise thereof were rejected upon finding a substantial secular justification for the law:

> In addition to [providing a one-day-in-seven work stoppage], the state seeks to set one day apart from all others as a day of rest, repose, recreation and

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[9] A useful comparison may be drawn with the sale of alcoholic beverages. States may single out such sales for legislation, including a "never on a Sunday" type of rule, but it took two constitutional amendments to authorize the discrimination. *See* U.S. Const. amends. XVIII and XXI.

> tranquility—a day which all members of the family and community have the opportunity to spend and enjoy together, a day on which there exists relative quiet and disassociation from the everyday intensity of commercial activities, a day on which people may visit friends and relatives who are not available during working days.

Id. at 450 (footnote omitted). This legitimate state purpose rendered the statute a valid exercise of the state's police power.

Appellants in *McGowan* further argued that the pattern of exceptions to the general Sunday closing statute was irrational and thus violated the Equal Protection Clause. The Court disagreed, but not for the reason that discriminatory treatment of certain isolated trades was itself permissible. Instead, the exceptions were justified only because the legislature could reasonably have found the exceptions were "necessary either for the health of the populace or for the enhancement of the recreational atmosphere of the day." *Id.* at 426. *See also Two Guys from Harrison-Allentown, Inc.* v. *McGinley,* 366 U.S. 582, 591 (1961) and *Gallagher* v. *Crown Kosher Market,* 366 U.S. 617, 623 (1961)(Opinion of Warren, C.J.).

The Court's holdings in *McGowan* and its companion cases establish that providing a common day of rest is a legitimate state interest. They do not stand for the principle, necessary to sustain the Illinois automobile dealer Sunday closing statute, that singling out only one endeavor for a day of rest is constitutionally acceptable.[10] Indeed, the cases stand for a contrary principle. If providing something less than a common day of rest were sufficient, the Court would not have looked for and found a reason to believe that the exclusion of certain trades from the Sunday prohibition in fact advanced the state interest in providing a *common* day of rest. It would have been sufficient that, as applied, the statute served to provide a day of rest only for those professions in fact included within the Sunday prohibition.

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[10] The Illinois statute, in fact, cannot reasonably be presumed even to provide a day of rest for automobile salesmen, as the opportunity for employment in related or unrelated trades is freely available.

Decisions from state courts across the nation confirm that Sunday closing laws are justifiable as providing a day of rest only insofar as they may reasonably be viewed as providing for the welfare of the community as a whole. Where, for example, the distinctions drawn between those classes of business which may remain open and those which must close are "arbitrary and discriminatory," the legitimacy of the state's purpose of providing a common day of rest is destroyed and the statutes are deemed unconstitutional. *Caldor's, Inc.* v. *Bedding Barn, Inc.*, 177 Conn. 304, 417 A.2d 343 (1979). *See Harry's Hardware, Inc.* v. *Parsons*, 410 So.2d 735, 737 (La.), *cert. denied*, 459 U.S. 881 (1982); *Rutledge* v. *Gaylord's, Inc.*, 233 Ga. 694, 213 S.E.2d 626 (1975); *County of Spokane* v. *Valu-Mart, Inc.*, 69 Wash.2d 712, 419 P.2d 993 (1966); *Skag-Way Department Stores, Inc.* v. *Omaha*, 179 Neb. 707, 140 N.W.2d 28 (1966). If the law were otherwise, constitutional analysis would be reduced to the syllogism that the legislature intended to provide a day of rest for those it in fact prohibited from doing business on Sunday, and that the statute therefore served a legitimate purpose. The Equal Protection Clause could not and does not sanction the possibility of such arbitrary legislative action.

CONCLUSION

The Illinois automobile dealer Sunday closing statute is an unconstitutional exercise of legislative authority. Viewed as an economic regulation, the Act illegitimately restrains trade to serve purely private interests. Similarly, no recognized public purpose could rationally be served by the statute when considered as an attempt to provide a day of rest for automobile salesmen. In either case no legitimate public interest is served to justify the discrimination and economic injury inflicted by the law upon appellants. For this reason the Illinois statute is unconstitutional and the present appeal presents a question so substantial as to require plenary briefing and oral argument.

Respectfully submitted,

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August 31, 1984

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APPENDIX A

SUPREME COURT OF ILLINOIS

Docket Nos. 57919, 57920 cons.—Agenda 36

September 1983

Filed, April 19, 1984

FIRESIDE CHRYLSER-PLYMOUTH, MAZDA, INC., *et al.*,
Appellees,

v.

JIM EDGAR, Secretary of State, *et al.*,
Appellants.

JUSTICE GOLDENHERSH delivered the opinion of the court:

Defendant, Jim Edgar, Secretary of State, and intervening defendants, Chicago Automobile Trade Association and the Illinois New Car and Truck Dealers Association, appeal from the judgment of the circuit court of Cook County holding unconstitutional section 5-106 of the Illinois Vehicle Code (Ill. Rev. Stat., 1982 Supp., ch. 95½, par. 5-106). Section 5-106 was added to the Vehicle Code by Public Act 82-788, effective January 1, 1983 (1982 Ill. Laws 1258), and in pertinent part provides that:

> "No person licensed under Sections 5-101 [new vehicle dealers] and 5-102 [used vehicle dealers] may keep open, operate, or assist in keeping open or operating any established place of business for the purpose of buying, selling, bartering or exchanging, or offering for sale, barter or exchange, any motor vehicle, whether new or used, on the first day of the week, commonly called Sunday; * * *." Ill. Rev. Stat., 1982 Supp., ch. 95½, par. 5-106.

Plaintiffs are corporations licensed by the Secretary of State to sell automobiles. They filed a complaint seeking an order declaring section 5-106 of the Vehicle Code to be unconstitutional and void and an order enjoining defendant Secretary of State from enforcing it. Joseph W. Longo was given leave to intervene as an intervening plaintiff, but the record contains no pleadings filed on his behalf. In one of the briefs he is described as "an Illinois resident and a consumer," but the nature of his interest in the litigation cannot be determined.

Chicago Automobile Trade Association and the Illinois New Car and Truck Dealers Association were given leave to intervene as defendants. Defendant Secretary of State and the intervening defendants filed motions to dismiss plaintiffs' complaint, and the plaintiffs moved for summary judgment. The circuit court found that section 5-106 constituted "special legislation in violation of article IV section 13 of the Constitution of the State of Illinois," that it denied plaintiffs equal protection of the law "as guaranteed by the Constitution of the United States" and was unconstitutional and void. Because defendant Secretary of State agreed that there would be no attempt to enforce the statute pending appeal, no injunction was ordered. Defendant Secretary of State and the intervening defendants appealed directly to this court (Rule 302(a), 87 Ill. 2d R. 302(a)).

The Constitution of 1970 provides:

> "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV, sec. 13.

Plaintiffs contended in the circuit court, and argue here, that the statute is special legislation in violation of article IV, section 13, and denies them equal protection of the law in violation of the fourteenth amendment to the Constitution of the United States. They argue that the General Assembly "cannot single out auto dealers for a Sunday closing law" and that there is no reasonable basis for the separate classification

of automobile dealers to require them to remain closed on Sunday. Defendants contend that section 5-106 is not special legislation, does not create an unreasonable classification, and that plaintiffs have failed to overcome the presumption of the reasonableness of the classification. They argue too that the statute adds a reasonable restriction to "a compendium of rules" which specifically governs a class licensed to engage in the sale of automobiles.

In *Illinois Polygraph Society* v. *Pellicano* (1980), 83 Ill. 2d 130, the court said:

> "Special legislation confers a special benefit or exclusive privilege on a person or a group of persons to the exclusion of others similarly situated. (*Bridgewater* v. *Hotz* (1972), 51 Ill. 2d 103, 109-110.) It arbitrarily, and without a sound, reasonable basis, discriminates *in favor of* a select group. Such legislation differs from 'local laws' because it is not limited to a geographical portion of the State. (*Bridgewater* v. *Hotz* (1972), 51 Ill. 2d 103, 109; G. Braden & R. Cohn, The Illinois Constitution: An Annotated and Comparative Analysis 206 (1969).) Special legislation differs from a violation of equal protection in that the latter consists of arbitrary and invidious discrimination *against* a person or a class of persons. It results from the governmental withholding of a right, privilege or benefit from a person or a class of persons without a reasonable basis (or, where a fundamental right or suspect classification is involved, a compelling State interest) for doing so. Whether a law is attacked as special legislation or as violative of equal protection, it is still the duty of the courts to decide whether the classification is unreasonable in that it preferentially and arbitrarily includes a class (special legislation) to the exclusion of all others, or improperly denies a benefit to a class (equal protection). (See *Anderson* v. *Wagner* (1979), 79 Ill. 2d 295, 315.)" 83 Ill. 2d 130, 137-38.

Plaintiffs contend that the presumption of constitutionality has been rebutted and that this court's earlier decision in *Courtesy Motor Sales* v. *Ward* (1962), 24 Ill. 2d 82, requires affirmance of the judgment. In *Courtesy,* the court held invalid as violative of article IV, section 22, of the 1870 Constitution (Ill. Const. 1870, art. IV, sec. 22) a statute requiring automobile dealers to close on Sunday. The court said:

> "The need for observing Sunday as a day of rest is not unique to those engaged in selling automobiles, nor can we see any way in which the purpose of a Sunday law is promoted by prohibiting such activity that is not equally present in a prohibition of other businesses." 24 Ill. 2d 82, 86.

The fact that a similar statute was held unconstitutional in *Courtesy* does not require that it be held unconstitutional now. In *Fenske Brothers, Inc.* v. *Upholsterers International Union of North America* (1934), 358 Ill. 239, 250-51, the court said:

> "It is well settled that the legislature may, in the exercise of the police power of the State, enact those measures which have a tendency to promote the public comfort, health, safety, morals or welfare of society. (*Massie* v. *Cessna,* 239 Ill. 352; *Condon* v. *Village of Forest Park,* 278 id. 218.) The police power is considered capable of development and modification within certain limits, so that the powers of governmental control may be adequate and meet changing social and economic conditions. The power is not circumscribed by precedents arising out of past conditions but is elastic and capable of expansion in order to keep pace with human progress. It is not a fixed quantity, but it is the expression of social, economic and political conditions. (*People* v. *Rosehill Cemetery,* 334 Ill. 555; *Public Utilities Com.* v. *City of Quincy,* 290 id. 360.) In the exercise of this power the legislature may enact laws regulating, restraining or prohibiting anything harmful to the welfare of the people, even though such regulation, restraint or prohibition interferes with the liberty or

> property of an individual. Neither the fourteenth amendment to the Federal constitution nor any provision of the constitution of this State was designed to interfere with the police power to enact and enforce laws for the protection of the health, peace, morals or general welfare of the people. *Powell* v. *Pennsylvania,* 127 U.S. 678, 31 L. ed. 253; *People* v. *Anderson,* 355 Ill. 289; *Town of Cheney's Grove* v. *VanScoyoc,* 357 id. 52."

In recent years the General Assembly has enacted a number of statutes which pertain only to automobile dealers. Included are a scheme for the licensing of new and used vehicle dealers (Ill. Rev. Stat. 1981, ch. 95½, pars. 5-101, 5-102), the Motor Vehicle Retail Installment Sales Act (Ill. Rev. Stat. 1981, ch. 121½, par. 561 *et seq.*), the Motor Vehicle Franchise Act (Ill. Rev. Stat. 1981, ch. 121½, par. 751 *et seq.*), and the New-Car Buyer Protection Act (Pub. Act 83-768, effective January 1, 1984) (1983 Ill. Laws 4450). It has imposed on automobile dealers and other persons involved with the automotive industry record-keeping requirements not required of many retailers. See Ill. Rev. Stat. 1981, ch. 95½, par. 5-401.

These statutes demonstrate a legislative purpose to regulate certain aspects of the business of selling automobiles in a manner different from other retail enterprises. The statute here involved is part of the regulatory scheme and, as the court said in *Bridgewater* v. *Hotz* (1972), 51 Ill. 2d 103, "[w]hether the course chosen is wise or whether it is the best means to achieve the desired result is not a proper subject of judicial inquiry" (51 Ill. 2d 103, 111). Plaintiffs have not overcome the presumption that the classification is reasonable, and the judgment of the circuit court is reversed. The cause is remanded to the circuit court of Cook County with directions to dismiss the complaint.

Judgment reversed;
cause remanded,
with directions.

JUSTICE SIMON, dissenting:

The question presented here was decided in *Courtesy Motor Sales* v. *Ward* (1962), 24 Ill. 2d 82, in which a nearly identical Sunday closing law was, without dissent, declared unconstitutional. The majority opinion virtually ignores the holding of that case, relying only on the maxim that "'* * * [t]he [police] power is not circumscribed by precedents arising out of past conditions but is elastic and capable of expansion in order to keep pace with human progress' " (App. A at A-4, quoting from *Fenske Brothers, Inc.* v. *Upholsterers International Union of North America* (1934), 358 Ill. 239, 250-51) and the observation that numerous statutes regulating automobile dealers have been passed in this State since *Courtesy Motor* was decided. However, the circumstances relied on here are not sufficiently different from those in *Courtesy Motor* to warrant departing from the law clearly set forth 22 years ago in that case.

The statute which this court examined in *Courtesy Motor* made it a crime to "keep open * * * any place or premises * * * for the purpose of buying, selling bartering or exchanging * * * any motor vehicle * * * on the first day of the week, commonly called Sunday. * * * " (Ill. Rev. Stat. 1961, ch. 121½, par. 282.) This court struck down this provision as special legislation (Ill. Const. 1870, art. IV, sec. 22) because it did not apply to any forms of activity other than the sale or exchange of automobiles and no interest of the State was reasonably served by applying a Sunday closing law to so limited a range of activity. The court noted that "the basic purpose of Sunday closing laws is to 'provide a uniform day of rest to all citizens' " (*Courtesy Motor Sales* v. *Ward* (1962), 24 Ill. 2d 82, 87, citing *McGowan* v. *Maryland* (1961), 366 U.S. 420, 445, 6 L. Ed. 2d 393, 410, 81 S. Ct. 1101, 1115) and responded in the following way to the contention, also advanced by those supporting the statute in this case, that special circumstances justified the special legislation.

> "Defendants and the *amici* argue that the automobile sales industry has many characteristics which distinguish it from other businesses, that *numerous aspects of modern life relating only to the*

> *automobile, its use, operation or sale have been the subject of special legislative attention,* and that it would not be realistic to hold arbitrary legislation classifying motor vehicle dealers separately and apart from merchants in general. This argument misconceives the issue here. *The question is not simply whether automobile dealers may be classified separately for the purpose of legislation. It is whether they may be classified separately for the purpose of a Sunday closing law."* (Emphasis added.) 24 Ill. 2d 82, 87.

Stare decisis applies in principle to the exercise of the police power in the same way it does to any other kind of case. The police power, however, is a response to circumstances, and what may be done under that power depends on the circumstances to be met; a law needed to correct a new evil may be valid although the same law when no such evil existed was not. Thus, in considering the value of an old precedent in deciding whether the police power was properly exercised, it is in point to ask what circumstances have changed.

The majority does not explicitly overrule *Courtesy Motor* or even find fault with its reasoning. It grounds its different result, apparently, on what it considers to be altered circumstances. Yet what has changed since that decision was rendered? Not the statute: the only difference is that the one we are called upon to consider here, unlike its predecessor, applies only to "person[s] licensed [to sell automobiles] under Sections 5-101 and 5-102" and concerns only "established place[s] of business" (Ill. Rev. Stat., 1982 Supp., ch 95½, par. 5-106) rather than "any place or premises or residences" (Ill. Rev. Stat. 1961, ch. 121½, par. 282), a change which, if anything, renders the current statute more rather than less susceptible to challenge as special legislation, inasmuch as it appears to favor unlicensed or home dealers at the expense of orgainzed dealerships. The applicable constitutional provision has not changed: now as then it prohibits the passage of a special law where a general law is or can be made applicable. (Compare Ill. Const. 1970, art. IV, sec. 13, with Ill. Const. 1870, art. IV sec. 22.) This court

has already determined that the 1970 constitution did not change the special legislation prohibition in any substantive way. *Bridgewater* v. *Hotz* (1972), 51 Ill. 2d 103, 109-10.

The majority's explanation for upholding this Sunday closing law appears in the final paragraph of the opinion. In the preceding paragraph, the majority refers to the following statutes regulating automotive dealers enacted after the *Courtesy Motor* decision in 1962: (1) a law requiring that sellers of new and used cars be licensed and comply with the provisions of the applicable occupation tax act as a prerequisite for doing business in this State (Ill. Rev. Stat. 1981, ch. 95½, pars. 5-101, 5-102), (ii) laws requiring such dealers, as well as used parts dealers and scrap processors, to keep detailed records of all parts acquired or used, including their serial numbers or absence thereof (Ill. Rev. Stat. 1981, ch. 95½, pars. 5-401, 5-401.1), (iii) legislation concerning credit and collection provisions in installment sales contracts (Ill. Rev. Stat. 1981, ch. 121½, par. 561 *et seq.*), (iv) legislation defining and providing remedies for illegal coercive or restrictive practices between auto manufacturers, manufacturer's representatives and dealers in the awarding and termination of franchises and in providing franchises with inventory (Ill. Rev. Stat. 1981, ch. 121½, par. 751 *et seq.*), and (v) a recent enactment, sometimes referred to as the "lemon law," which provides for mandatory replacement of a new car or return of its purchase price if a reasonable number of attempts to repair it or make it conform to its express warranties are unsuccessful (Pub. Act. 83-768, eff. Jan. 1, 1984) (1983 Ill. Laws 4450). After referring to these statutes and recordkeeping requirements imposed on the automotive industry, but "not required of many retailers," the majority opinion states:

> "These statutes demonstrate a legislative purpose to regulate certain aspects of the business of selling automobiles in a manner different from other retail enterprises. The statute here involved is part of the regulatory scheme * * *." (App. A at A-5.)

However, the majority opinion is barren of any support for its assertion that the Sunday closing requirement is a part of a

regulatory scheme, and it fails to demonstrate in any manner how Sunday closing is useful or serves any purpose in furthering any regulatory scheme imposed upon automobile sales or in facilitating the record keeping required of dealers. While the defendants argue that Sunday closing is a reasonable restriction added to a compendium of regulations which govern a class licensed to engage in the sale of automobiles, they do not explain how closing down automobile showrooms on Sunday is required or assists in enforcing these regulatory measures or is in any way related to them, and neither does the majority opinion. It is significant to note that used-parts dealers, scrap processors, automotive-parts recyclers, and rebuilders must also be licensed under chapter 5 of the Illinois Vehicle Code and must maintain the same records as new- and used-vehicle dealers (Ill. Rev. Stat. 1981, ch. 95½, par. 5-301), but the Sunday closing law does not apply to them even though they purchase automobiles and buy and sell used parts. A Sunday closing law might be understandable if there were some intrinsic link between the interests underlying the existing regulations and the need to close licensed dealerships on Sunday, so that it could be said that the closing requirement is part of an integrated scheme which was not in place when *Courtesy Motor* was decided, or at least that it might somehow facilitate efficient and evenhanded enforcement of new regulations. The majority, however, does not even attempt to detail any such connection, none is advanced by the defendants' briefs, and none is apparent to me.

The laws on which the majority relies to show that the automobile business has become the subject of additional State regulations demonstrate at most a legislative purpose to regulate certain aspects of the sale of automobiles, motivated by an awareness, perhaps, that the business is peculiarly rife with dishonest or coercive trade practices and particularly susceptible to product failure after sale and that stolen automobile parts are a lucrative source of income for organized crime. A Sunday closing requirement has nothing to do with any of these concerns, and nothing in the record before us shows that any of these problems will be better controlled by closing automobile showrooms on Sunday. There is therefore nothing in the

majority opinion which satisfactorily explains the court's decision to abandon *Courtesy Motor* as precedent or its reluctance to come to grips with the justification for the Sunday closing law in its present context.

The statute identifies by name a particular trade for which it establishes a special rule which on its face has nothing in particular to do with that trade as compared with the large number of other businesses which are open on Sundays. This is special legislation on its face. The defendants argue that it is not as a definitional matter because it does not confer a benefit or a privilege on any class, but at most places a restraint on the class. *Illinois Polygraph Society* v. *Pellicano* (1980), 83 Ill. 2d 130. However, *Courtesy Motor* explicitly held otherwise; it disposed of the predecessor of the present law solely on the ground that it was special legislation, saying:

> "The present statute, which singles out only one activity or occupation to which this day of rest shall apply, is a special law within the meaning of section 22 of article IV of the Illinois constitution." (*Courtesy Motor Sales* v. *Ward* (1962), 24 Ill. 2d 82, 87-88.)

The conclusion reached in *Courtesy Motor* was sound. Heretofore an automobile dealer, like anyone else, could choose to close on Sunday, but he had to accept the loss of business that might result. Customers who wanted to shop for cars on Sunday were free to patronize dealers who stayed open. Under the present law, however, the auto dealer who wishes to close on Sunday may defy the interest of purchasers and serve only his own, with the assurance that the law prevents his competitors from gaining any advantage by doing otherwise. The statute supplies a legislatively mandated respite from competition. The desire of some dealers to close on Sundays is placed, by law, above the liberty of other dealers to pursue a useful and harmless business to their own best advantage by serving the shopping public in the way the public wants to be served. Dealers who wish to close on Sundays are also placed, by law, above the liberty of the buying public to shop for automobiles at its own convenience. This takes place only in the automobile business and not in the case of the thousands of

other retail sellers in the State of Illinois who are open on Sunday—stores in shopping malls, department stores, discount stores, furniture stores, boat sellers, airplane dealers, and other sellers of nonessential commodities.

Were automobile dealers to attempt to accomplish this result by agreeing with their competitors to close on Sundays, it is unlikely that enough would go along to make the effort successful. Besides, the participants might be charged with conspiring to restrain trade. Accomplishing this result by having the legislature legitimize it is much more convenient and also safer. This law not only gives automobile dealers special practical benefits and imposes special burdens on automobile purchases, but it is, in addition, inconsistent with the antitrust policy of free and open competition. Because this legislation applies only to the automobile business with no showing of any practical need to limit it to that business, it is special legislation.

The majority's contention is that the law is constitutional because the automobile trade is a reasonable classification. But a reasonable classification for what? The special legislation prohibition requires active judicial review of classifications created by the legislature that confer a special benefit on a particular group, and such classifications should receive little deference in determining whether they are merely avenues for providing special benefits. There must be a "sound, reasonable basis [for] discriminat[ing] in *favor* of a select group." (*Illinois Polygraph Society* v. *Pellicano* (1980), 83 Ill. 2d 130, 137-38.) A legislative classification cannot be upheld unless it is a reasonable way of furthering a legitimate legislative purpose.

The majority states that the statutes which it cites "demonstrate a legislative purpose to regulate certain aspects of the business of selling automobiles in a manner different from other retail enterprises." (App. A at A-5.) There must, however, be some useful and permissible purpose for each specific legislative classification other than a naked intent to confer a benefit or impose a burden upon a particular class. The fact that proper regulations designed to cure problems in the business of selling automobiles have been enacted does not make it open season for the legislature to impose any type of regulation it wishes on

automobile dealers even though it bears no relationship to other regulations which have been imposed for a proper purpose, does nothing to facilitate the enforcement of those regulations, and has no independent justification. There is no reasonable basis for the majority's conclusion that the separate classification of automobile dealers is proper when the sole effect of the classification is, as in this case, to suppress competition between automobile dealers on Sunday, an obviously improper legislative purpose. For these reasons, the present statute, like the statute considered in *Courtesy Motor,* is special legislation.

A special law is improper under Article IV, section 13, of our constitution if a general law is or can be made applicable, and the Constitution requires a reasonable attempt to make the law as general as possible. Special legislation, unlike alleged denials of equal protection, cannot be justified on the theory that the legislature may take one step at a time. If a general law can be made applicable, the legislature may not experiment with a special law instead. (*Grace* v. *Howlett* (1972), 51 Ill. 2d 478, 487; *Wright* v. *Central Du Page Hospital Association* (1976), 63 Ill. 2d 313, 329; *People ex rel. East Side Levee & Sanitary District* (1973), 54 Ill. 2d 442, 447.) It is obvious that a general law which applies to all other pursuits, occupations and businesses in Illinois can be made applicable to the retail automobile business, as this court held in *Courtesy Motor Sales* v. *Ward* (1962), 24 Ill. 2d 82, 87.

The Secretary of State's brief explains the reason for the law more fully and more openly than the majority opinion does. It argues that the statute is required for economic reasons. First, it states that the automobile sales business is intensely competitive and that those in it compete at least partly on the basis of service, so that one seller's ability to remain open at all times—particularly on weekends when much of the actual purchasing is done—determines his share of the available market and, apparently, his profitability. His brief asserts that the resulting pressure on the employees of such sellers to report to work seven days a week is itself inimical to the public welfare, although nothing in the record documents the assertion that those employed by automobile dealers are required to work seven days a week. The Secretary of State also argues

that the industry is suffering from severely depressed economic conditions which, when combined with the high cost of staying open seven days a week, threaten the survival of many automobile dealers. Therefore, it reasons, a Sunday closing law which is designed to ameliorate the damaging effects of dealers' mutual competition is necessary to assure the continued financial viability of the industry.

Even if this rationale were a convincing ground for treating automobile dealers differently from the rest of the economy, I would be unwilling to rule here as the majority does for the reason that this court has in *Courtesy Motor* already unanimously decided the legal question here presented adversely to the State. To the extent that the current version of the statute is represented to us as a response to a recession in the economy that did not exist in 1962, it is difficult to understand the eagerness of the intervening trade associations to continue to defend it in the face of an article in an automotive trade journal, placed in evidence by the plaintiffs and unrebutted by the defendants, which recites statistics showing that sales of new cars reached a four-year record high in June 1983. (*Domestic car sales jump 47 pct.*, Automotive News, July 11, 1983, at 69, col. 1.) It is common knowledge that there has been further improvement in automobile sales since last June. See *Car sales up 73%; best since '78*, Chicago Sun-Times, February 24, 1984, at 79, col. 1.

There is not sufficient rationality in the legislative scheme to save it under the arguments advanced by the defendants. The recession cited by the defendants, if it exists at all, is economy-wide, unlike the statute we are called upon to examine. When this statute was enacted, almost all retail sales were declining because of a weak economy. High interest rates and widespread unemployment had the same effect on the sale of television sets, furniture, boats, and washing machines as they had on the sale of automobiles. This is not a reason for validly asserting a separate classification for automobile dealers.

Defendants in their oral argument, although not in their briefs, appeared to grasp for an explanation for the law by suggesting that since the Secretary of State's office is closed on

Sundays, it would be impossible for a dealer or a customer to check the title of an automobile or report an improper sales practice should any occur on Sunday. Obviously this is a contrived argument, for State offices are closed on Saturdays and many holidays as well as Sunday, while auto dealers are free to ply their trade on all days other than Sunday. The uselessness of a Sunday closing law in regard to any interest the State might have in facilitating the reporting or tracing of irregularities is apparent from the fact that a sale which occurs on a Saturday or a Friday evening must go unreported twice as long as one which occurs on a Sunday.

Quite apart from whether they constitute special legislation under the provisions of our own constitution, other serious constitutional problems attend Sunday closing laws. A short time before *Courtesy Motor* came before this court, the United States Supreme Court was confronted with the question of whether Sunday closing laws which applied to all businesses with but a few enumerated exceptions and were designed to provide a uniform day of rest were unconstitutional as violating the establishment and free exercise clauses of the first amendment. *Gallagher* v. *Crown Kosher Super Market of Massachusetts, Inc.* (1961), 366 U.S. 617, 627-29, 6 L. Ed. 2d 536, 542 43, 81 S. Ct. 1122, 1127-28; *Braunfeld* v. *Brown* (1961), 366 U.S. 599, 607, 6 L. Ed. 2d 563, 569, 81 S. Ct. 1144, 1148; *Two Guys from Harrison-Allentown, Inc.* v. *McGinley* (1961), 366 U.S. 582, 595-96, n.14, 6 L. Ed. 2d 551, 560, n.14, 81 S. Ct. 1135, 1142-43, n.14; *McGowan* v. *Maryland* (1961), 366 U.S. 420, 445, 450, 6 L. Ed. 2d 393, 410, 413, 81 S. Ct. 1101, 1115, 1118.

The Sunday closing law we are considering is quite unlike any of those which the Supreme Court passed upon. Clearly a Sunday closing law which applies only to licensed automobile dealers, while permitting all other obtrusive activities, including widespread retail sales as well as the sale of automobiles by nonlicensed dealers, to continue unabated on that day, cannot contribute meaningfully to achieving a general day of rest and must therefore have been intended for other purposes.

This issue was not raised, however, by the plaintiffs in the instant case, presumably because none of them had standing to raise it. For that reason I feel it requires no further discussion

here, although I view it as a problem that this court may be required to face in the future if raised by someone with proper standing.

Finally, I am concerned with the legitimacy of what the Secretary of State appears to admit is the real reason for the Sunday closing law in this case, to increase the profitability of the automobile sales business by decreasing competition and reducing the availability of its product. As I have indicated, I view the law as having the effect of reducing purchasers' options, denying them the opportunity to buy cars on the day consumers are most free to shop around with their families, thereby forcing them to postpone their purchases or channeling their demand to other days of the week and to those dealers which are most readily accessible to the family on a workday.

In whatever terms the law is viewed, the law's effect and intent are in conflict with the "legislative judgment in favor of competition" which is expressed by the Congress in the national antitrust laws (Givens, Antitrust: An Economic Approach sec. 2.01, at 2-6 (1983); see *National Society* v. *United States* (1978), 435 U.S. 679, 695, 55 L. Ed. 2d 637, 652, 98 S. Ct. 1355, 1367; *Standard Oil Co.* v. *Federal Trade Com.* (1951), 340 U.S. 231, 248-49, 95 L. Ed. 239, 250-51, 71 S. Ct. 240, 249; *United States* v. *Trenton Potteries Co.* (1927), 273 U.S. 392, 397, 71 L. Ed. 700, 705, 47 S. Ct. 377, 379). The unconcealed restraint the statute places on purchasers as well as on those dealers who wish to remain open on Sundays strikes at the heart of Congress' "assumption that competition is the best method of allocating resources in a free market [which] recognizes that all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers" (*National Society* v. *United States* (1978), 435 U.S. 679, 695, 55 L. Ed. 2d 637, 652, 98 S. Ct. 1355, 1367). The law which the majority has upheld is for this reason inconsistent with the public policy of both our nation and our State. By abetting such a restraint on competition by legislation promulgated in the name of the economic welfare of its citizens, I submit that the State has gone beyond the permissible scope of its police power.

JUSTICE UNDERWOOD joins in this dissent.

APPENDIX B

IN THE

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

No. 82 CH 5692

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., an Illinois Corp., CELOZZI-ETTLESON CHEVROLET, INC., an Illinois Corp., and JOHN BYBEE CHRYSLER-PLYMOUTH, INC., an Illinois Corp.,

v.

JIM EDGAR, Secretary of the State of Illinois.

ORDER

This cause coming on to be heard on Plaintiffs' Motion for Summary Judgment, due notice having been served, and the Court having read the various Memoranda of all of the parties; and otherwise being fully advised in the premises, DOTH FINDS:

1. That an actual controversy exists between the parties;

2. That there are no genuine issues of material fact;

3. That House Bill 1243; Illinois Revised Statute, Chapter 95½, Section 5-106, is unconstitutional and void, said Statute constituting special legislation in violation of Article IV, Section 13 of the Constitution of the State of Illinois (1970); and

4. That House Bill 1243; Illinois Revised Statute, Chapter 95½, Section 5-106 is unconstitutional and void, said Statute violating the Plaintiffs' rights to equal protection of the law as guaranteed by the Constitution of the United States and the State of Illinois; accordingly

IT IS HEREBY ORDERED:

1. That the Motions of Defendant and Intervening Defendants to dismiss Plaintiffs' Complaint are denied;

2. That Plaintiffs' Motion for Summary Judgment be granted;

3. That the Court declares House Bill 1243; Illinois Revised Stature, Chapter 95½, Section 5-106, to be unconstitutional and void for the reasons as set forth herein.

4. That the Court retains jurisdiction for the enforcement of this order.

ENTERED
Clerk of the Circuit Court
Morgan M. Finley
December 22, 1982
Judge Joseph M. Wosik

Name	GORDON & GORDON, LTD.
Attorney for	Plaintiffs
Address	180 North LaSalle Street
City	Chicago, Illinois 60601
Telephone	332-2490

STATE OF ILLINOIS
COUNTY OF COOK } ss:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—CHANCERY DIVISION

FIRESIDE CHRYSLER,
Plaintiff,
vs.
SECRETARY OF STATE, JIM EDGAR,
Defendant.

No. 82 CH 5692

TRANSCRIPT OF JUDGE'S RULING had in the above-entitled cause on the 23rd day of December, A.D. 1982, at 9:10 a.m. (Corrected Copy).

PRESENT:

GORDON & GORDON, LTD.,
(180 North LaSalle Street,
Chicago, Illinois 60601), by:
MR. GILBERT W. GORDON,

appeared on behalf of the Plaintiffs;

MESSRS. O'KEEFE, ASHENDEN, LYONS & WARD,
(One First National Plaza,
Chicago, Illinois 60603), by:
MR. DENNIS M. O'KEEFE,

appeared on behalf of the Defendants.

Honorable Tyrone C. Fahner,
Attorney General, State of Illinois,
(160 North LaSalle Street,
Chicago, Illinois 60601), by:
MR. ROGER FLAHAVEN,
Assistant Attorney General,

appeared on behalf of Jim Edgar.

MR. O'KEFFE: This is the Judge's finding on the motion for—in response for the motion for summary judgment filed by the Plaintiffs.

JUDGE WOSIK'S FINDING

Normally, this court would hold a more exhaustive hearing on the constitutionality issue, but because the Secretary of State honored a request to admit facts, stated that he intends to enforce the new statute after January 1, 1983, it thus creates an issue and appears to this Court that, with the briefs and pleadings now on file, this Court can rule on what it has before it: Namely, injunctive relief and the summary judgment and constitutionality of this statute, House Bill 1243.

The motion of the Attorney General to dismiss is denied, as is the intervener's motion to dismiss.

Justice Simon, in Illinois Bell versus Olfson, just recently wrote in his opinion as of last week, "that statutes are to be interpreted in a manner consistent with the laws of the State of Illinois, of the law existent at the time of their enactment."

Therefore, he cites People versus Boveman, 401 Ill. 566, a 1948 case. There is no question about it that, as Mr. Flahaven states, "statutes are presumptively valid." But in this case, it appears to this Court that the legislature, with a cavalier attitude, ignored the existing law which our Supreme Court already made in Courtesy versus Ward, 24 Ill. 2d. 82, Eden versus People, 161 Ill. 296, City of Marengo versus Rowland, 263 Ill. 531, and as Justice Simon states in his current opinion as to the existing law.

Likewise, the Pellicano Case properly states the law:

> "Whether a law is attacked as special legislation or as violative of equal protection, it is still the duty of the Court to decide whether the classification is unreasonable, in that it preferably and arbitrarily includes a class (special legislation) to the exclusion of all others or improperly denies a benefit of a class (equal protection)."

The issue here is classification rather than prohibition, and classification rests upon a reasonable basis.

The Defendants argue that the statute is distinguishable from Courtesy, in that the new statute alludes to one, economic situation and, two, free time for salesmen to be with their families.

In effect, the defense is arguing that those issues change what was said in Courtesy and the other cases cited. We have had economic problems for years with 11½ million people of all trades and businesses and occupations out of work.

Free time with families and other pursuits, those two points definitely arouse judicial skepticism and, unquestionably, judicial credulity. You are trying to get in the backdoor whereas the front door is unavailable to you.

When you use the phrase "other pursuits," you no doubt mean another job, so as to be able to exist and feed your families. The auto dealers say that the 1961 law was enacted unconnected to any code or scheme of legislative regulatory acts operational at the time.

Neither Chancery nor the law favors "a scheme of legislative regulatory acts." In fact, the government is deregulating more and more each day. Schemes and regulatory acts are anathema to our society or our free enterprise system disappears.

What a scheme? It is either close on Sunday or lose your license. The speck of economic measures, no prohibition, no supervision, no fine. Just close it up regardless of how many people are employed, investment capital, hardship or whatever.

I believe it to be nonsensical and legislatively whimsical. I see absolutely no probative value in these elements: One, what other states do and, two, whether banks are open Sunday or the Secretary of State or insurance companies are open on Sundays.

Now, because the Attorney General and the interveners see no relationship to the new statute and the existing law, let us analyze Justice Klingbiel's Courtesy opinion.

Courtesy Motors and two employees brought suit to declare unconstitutional a statute prohibiting the sale of automobiles on Sunday, and to enjoin officials charged with its enforcement. Chicago Automobile Trade Association intervened, as in this case.

Illinois Automobile Trade Association filed briefs as amicus curiae. The statute made it a crime. Never on Sunday. Plaintiff contended that the statute violates equal protection, special legislation, and that the statute singles out one group and places a restriction not imposed on the sellers of any other commodity, citing Eden versus People, 161 Ill. 296., (which applied only to barber shop closings).

The Court held the act void as constituting an unlawful discrimination, "If the public welfare of the state demands that all businesses, all labor of every description except works of necessity and charity, should cease on Sunday, the first day of the week, and that day should be kept as a day of rest, the legislature has the power to enact a law requiring all persons to refrain from their ordinary callings on that day.

"All will then be placed on a per-equality and no one can complain of unjust discrimination. But when the legislature undertakes to single out one class of labor, harmless in itself and condemns that and that alone, it transcends its legitimate powers and its action cannot be sustained."

The Plaintiff here complains of its discrimination or inequality of treatment as between automobile businesses and all others which is the same as the case before me. "The issue concerns the classification rather than the prohibition, and the classification must rest upon a reasonable basis."

Now, on Page 86 of the opinion, the words "health and welfare" were inferred from the preamble. In our case, we have the economic factor and the free time with families and other pursuits, plus the fact this statute is tied in with the Motor Vehicle Act, an absurdity in my judgment and out of context with the real issue, again, ploy and subterfuge as to the existing law.

Now, again from Justice Klingbiel of the Supreme Court, the statute in the case at bar applies not to business activity generally, with reasonable exceptions for emergency needs, but only to the sale of motor vehicles.

There is no distinction in the present respect which can justify singling them out as objects of special consideration of the lawmakers. As we observed in declaring void one Sunday law, which only applies to barbering, a law or ordinance applicable to certain classes or a certain class of citizens to be constitutional must be based upon substantial differences between the situation of such class or classes and other individuals or classes to which it does not apply, citing City of Marengo versus Rowland, 263 Ill. 531.

Further, defendants and the amicus argue that the automobile sales industry has many characteristics which distinguish it from other businesses; that numerous aspects of modern life relating only to the automobile, its use, operation, or sale, have been the subject of special legislative attention, and that it would not be realistic to hold arbitrary legislative classifying motor vehicles separately and apart from merchants in general.

This argument misconceives the issue here. The question is not simply whether automobile dealers may be classified separately for the purpose of legislation, "it is whether they may be classified separately for the purpose of a Sunday closing law."

The basic purpose of Sunday closing laws is to "provide a uniform day of rest for all citizens." This is clearly a case "where a general law can be made applicable."

I, therefore, rule that this present statute, which singles out only one activity or occupation to which this day of rest shall apply, is a special law within the meaning of our constitution, and it is therefore unconstitutional and void.

Summary judgment is granted in favor of the Plaintiffs.

(WHICH WERE ALL THE PROCEEDINGS HAD IN THE FOREGOING CAUSE ON THIS DATE.)

STATE OF ILLINOIS
COUNTY OF COOK } ss:

I, ELAINE R. GOLDMAN, a Certified Shorthand Reporter of the State of Illinois, do hereby certify that I reported in shorthand the proceedings had at the meeting aforesaid, and that the foregoing is a true, complete and correct transcript of the proceedings of said meeting as appears from my stenographic notes so taken and transcribed under my personal direction.

IN WITNESS WHEREOF, I do hereunto set my hand at Chicago, Illinois this llth day of January A.D. 1983.

/s/ ELAINE R. GOLDMAN
Certified Shorthand Reporter

C.S.R. Certificate No. 84-2609.

APPENDIX C

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

June 4, 1984

MR. GILBERT GORDON
GORDON & GORDON
180 N. LaSalle St., S#2505
Chicago, IL 60601

Nos. 57919—Fireside Chrysler-Plymouth, Mazda, Inc.,
57920 an Illinois Corporation, *et al.*, etc., *et al.*,
Cons. appellees, vs. Jim Edgar, Secretary of the
State of Illinois, *et al.*, appellants.
Appeal, Circuit Court (Cook).

The Supreme Court today *DENIED* the petition for rehearing in the above entitled cause.

The mandate of this Court will issue to the appropriate Appellate Court, Circuit Court or other Agency on June 11, 1984.

Enclosed please find corrected pages of the dissent.

No. 57919 and 57920 cons.

IN THE SUPREME COURT OF ILLINOIS

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC, etc., *et al.*, *Appellees,* JOSEPH W. LONGO, *Appellee,* vs. JIM EDGAR, etc., *Appellant,* CHICAGO AUTOMOBILE TRADE ASSOCIATION, etc., *et al.*	**Appeal from Circuit Court of Cook County** **No. 82 CH 5692**

ORDER

This matter has come for consideration upon the motion of appellees to stay the mandate of this Court pending appeal or application for *certiorari* in the United States Supreme Court.

IT IS ORDERED that the mandate of this Court in the above cause is stayed pending the filing of a notice of appeal or an application for *certiorari* or the expiration of the period within which such application or notice may be filed. If *certiorari* is applied for or notice of appeal filed, the mandate of this Court shall, upon proof of such filing being made by affidavit filed with the Clerk of the Court, be further stayed pending resolution by the United States Supreme Court of such application or appeal. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which appeal or *certiorari* may be sought.

FILED
June 18, 1984
Supreme Court Clerk

APPENDIX D

IN THE

SUPREME COURT OF THE STATE OF ILLINOIS

Nos. 57919, 57920 cons.

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., an Illinois Corporation, CELOZZI-ETTLESON CHEVROLET, INC., an Illinois corporation, and JOHN BYBEE CHRYSLER-PLYMOUTH, INC., an Illinois corporation,
Appellants,

vs.

JOSEPH W. LONGO,
Appellee,

and

JIM EDGAR, Secretary of the State of Illinois,
Appellee,

and

CHICAGO AUTOMOBILE TRADE ASSOCIATION, an Illinois corporation, and THE ILLINOIS NEW CAR AND TRUCK DEALERS ASSOCIATION, an Illinois corporation,
Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Fireside Chrysler-Plymouth, Mazda, Inc.; Celozzi-Ettleson Chevrolet, Inc.; and John Bybee Chrylser-Plymouth, Inc., the above-named Appellants, hereby appeal to the Supreme Court of the United States of America from the final judgment of the Supreme Court of Illinois

entered in this action on April 19, 1984, with petition for rehearing denied on June 4, 1984.

This Appeal is taken pursuant to 28 U.S.C. § 1257(2) (1982).

DATED:
August 10, 1984

/s/ CLARK M. CLIFFORD

CLARK M. CLIFFORD
PAUL C. WARNKE
ROBERT P. REZNICK
JAMES C. DUFF

CLIFFORD & WARNKE
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
(202) 828-4200

Attorneys for Appellant FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., CELOZZI-ETTLESON CHEVROLET, INC., and JOHN BYBEE CHRYSLER-PLYMOUTH, INC.

OF COUNSEL:

ROBERT E. GORDON
GILBERT W. GORDON

GORDON & GORDON, LTD.
180 NORTH LA SALLE STREET
SUITE 2505
CHICAGO, ILLINOIS 60601
(312) 332-2490

FILED
AUGUST 13, 1984
SUPREME COURT CLERK

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Appeal were served this 10th day of August, 1984 by first-class mail, postage prepaid, upon all counsel of record as follows:

NEIL F. HARTIGAN
Attorney General
State of Illinois
160 North La Salle Street
Chicago, Illinois 60601
Attorney for Defendant-Appellee
Jim Edgar, Secretary of the State of Illinois

THOMAS G. LYONS
DENNIS M. O'KEEFE
PATRICK L. MOORE
O'KEEFE, ASHENDEN, LYONS & WARD
One First National Plaza
Suite 5100
Chicago, Illinois 60603
Attorneys for Intervening Defendants-Appellees The Illinois New Car and Truck Dealers Association, Chicago Automobile Trade Association

MARGUERITE A. BUTLER
Suite 227
68 N. Chicago Street
Joliet, Illinois 60431
Attorney for Intervening Plaintiff-Appellee
Joseph W. Longo

/s/ ROBERT P. REZNICK

Robert P. Reznick

APPENDIX E

STATE OF ILLINOIS
COUNTY OF COOK } ss:

FILED
1982 Jul 14 AM 9:01
Circuit Court of
Cook County,
Illinois County Dep.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT--CHANCERY DIVISION

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., An Illinois Corporation, CELOZZI-ETTLESON CHEVROLET, INC., An Illinois Corporation, and JOHN BYBEE CHRYSLER-PLYMOUTH, INC., An Illinois Corporation,
Plaintiffs

vs.

JIM EDGAR, Secretary of State of Illinois,
Defendant.

IN CHANCERY

No. 82 CH 5692

COMPLAINT FOR INJUNCTION

NOW COME the Plaintiffs, FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., An Illinois Corporation, CELOZZI-ETTLESON CHEVROLET, INC., An Illinois Corporation, and JOHN BYBEE CHRYSLER-PLYMOUTH, INC., An Illinois Corporation, by their Attorneys GORDON & GORDON, Ltd., and complaining of the Defendant JIM EDGAR, Secretary of State of Illinois, state as follows:

(1) That at all times mentioned herein the Plaintiffs were and are corporations existing under and by virtue of the laws of the State of Illinois and in the business of the wholesale and retail sales of automobiles.

(2) That the Defendant is the Secretary of State of the State of Illinois with the statutory responsibility of the

licensing of automobile dealers such as the Plaintiffs herein.

(3) That on or about the 13th day of July, 1982, the State of Illinois enacted a certain law commonly known as House Bill No. 1243, which provides in pertinent part and substance that no automobile dealer or other person licensed for the wholesale or retail sale of automobiles may open or operate his place of business for the purpose of buying, selling, bartering or exchanging any motor vehicle on Sundays.

(4) That the Plaintiffs, FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., CELOZZI-ETTLESON CHEVROLET, INC., and JOHN BYBEE CHRYSLER-PLYMOUTH, INC. are automobile dealers licensed by the Secretary of State of Illlinois and operate business establishments in the County of Cook and State of Illinois at which they sell automobiles at both wholesale and retail and which are and have been for a long time prior hereto opened for business on Sundays.

(5) That House Bill No. 1243, as described herein, constitutes an improper classification of businesses with no reasonable or rational basis and violates the Constitutions of the United States and the State of Illinois in one or more of the following respects:

a) In constituting special legislation, in controvention of the provisions of the Constitution of the State of Illinois;

b) In denying the Plaintiffs and other dealers who wish to operate on Sundays equal protection of the laws, in violation of the Constitutions of the United States and the State of Illinois;

c) In that it arbitrarily singles out one group, the sellers of motor vehicles, for an unnecessary and unwarranted restriction not imposed on the sellers of any other commodity, in violation of the Constitutions of the United States and the State of Illinois; and

d) In constituting unlawful discrimination as to the Plaintiffs and other dealers who wish to operate on Sundays.

(6) That the Plaintiffs, FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., CELOZZI-ETTLESON CHEVROLET, INC., and JOHN BYBEE CHRYSLER-PLYMOUTH, INC., have and do operate to a substantial extent and rely to a substantial extent on the sales of motor vehicles on Sundays.

(7) That unless the Defendant JIM EDGAR, Secretary of State of Illinois, is enjoined from enforcing the provisions of House Bill 1243 the Plaintiffs will be irreparably damaged in that they will lose sales, customers, employees and other intangible aspects of their business.

(8) That the Plaintiffs have no adequate remedy at law.

WHEREFORE, the Plaintiffs, FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., An Illinois Corporation, CELOZZI-ETTLESON CHEVROLET, INC., An Illinois Corporation, and JOHN BYBEE CHRYSLER-PLYMOUTH, INC., An Illinois Corporation, pray for relief as follows:

A. For the entry of an Order declaring House Bill No. 1243, as an Amendment to the Motor Vehicle Code, Chapter 95½. Paragraph 5-106 of the Illinois Revised Statutes, to be unconstitutional and void;

B. For the entry of an injunction against the Defendant JIM EDGAR, Secretary of State of Illinois, from enforcing in any way the provisions of House Bill 1243, Chapter 95½, Paragraph 5-106 of the Illinois Revised Statutes, and for an injunction against said Defendant from in any way affecting or seeking to affect the license of any automobile dealer in the State of Illinois for the reason that they remained open on a Sunday;

C. For such other relief as the Court may deem equitable and just.

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., An Illinois Corporation, CELOZZI-ETTLESON CHEVROLET, INC., An Illinois Corporation, and JOHN BYBEE CHRYSLER-PLYMOUTH, INC., An Illinois Corporation,

By: /s/ GILBERT W. GORDON

Their Attorneys
GORDON & GORDON, Ltd.

STATE OF ILLINOIS
COUNTY OF COOK } ss:

GILBERT W. GORDON, first being duly sworn upon oath, deposes and states that he is the attorney for the Plaintiffs and has read the foregoing Complaint subscribed to by him and knows the contents thereof to be true and correct.

/s/ GILBERT W. GORDON
GILBERT W. GORDON

SUBSCRIBED and SWORN
to before me this 14th day of
July, 1982.

/s/ (SEAL)
NOTARY PUBLIC

GORDON & GORDON, Ltd.
Attorneys for the Plaintiffs
180 North LaSalle Street
Suite 2505
Chicago, Illinois 60601
332-2490

APPENDIX F

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—CHANCERY DIVISION

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., an Illinois Corp., CELOZZI-ETTLESON CHEVROLET, INC., an Illinois Corp., and JOHN BYBEE CHRYSLER-PLYMOUTH, INC., an Illinois Corp.,
Plaintiffs,
vs.

JIM EDGAR,
Secretary of the State of Illinois,
Defendant.

and

JOSEPH W. LONGO,
Intervening Plaintiff,
vs.

JIM EDGAR,
Secretary of the State of Illinois,
Defendant.

IN CHANCERY
No. 82 CH 5692

FILED
1982 Nov 17 PM 4:24
Circuit Court of
Cook County
Illinois County Dep.
Chancery Division

PETITION TO INTERVENE

NOW COME the Intervening Defendants, CHICAGO AUTOMOBILE TRADE ASSOCIATION and THE ILLINOIS NEW CAR AND TRUCK DEALERS ASSOCIATION, both Illinois corporations, by and through their attorneys, O'KEEFE, ASHENDEN, LYONS & WARD, and for their Petition for Intervention state as follows:

1. An action is now pending in this Court by FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC.,

CELOZZI-ETTLESON CHEVROLET, INC., and JOHN BYBEE CHRYSLER-PLYMOUTH, INC., all Illinois corporations, Plaintiffs, and JOSEPH W. LONGO, Intervening Plaintiff, against JIM EDGAR, Secretary of the State of Illinois, Defendant, for an injunction to prevent enforcement of House Bill 1243, Chapter 95½, Paragraph 5-106 of Illinois Revised Statutes, and for a finding that said law shall be found unconstitutional and void; and that said action has not proceeded to judgment.

2. That Intervening Defendants-Petitioners, CHICAGO AUTOMOBILE TRADE ASSOCIATION and THE ILLINOIS NEW CAR AND TRUCK DEALERS ASSOCIATION, are Trade Associations, whose membership is made up of numerous automobile dealerships, both incorporated and unincorporated, whose rights, privileges and opportunities to sell automobiles on Sunday are being affected by said House Bill 1243, which, in essence, forbids Sunday sale of motor vehicles by licensed automobile dealers.

3. That Intervening Defendants-Petitioners should be permitted to intervene as a matter of right in the main action, pursuant to Chapter 110, Paragraph 26.1(1)(b), in that Intervening Defendants have rights, privileges and interests that are dissimilar to the rights and interests that the original Defendant is seeking to protect and defend, that Intervening Defendants will therefore not be adequately represented by the existing Defendant and that Intervening Defendants would be bound by a judgment, decree or order in the main action and will either maintain or lose their rights and privileges to a Sunday Closing Law by the direct effect of the judgment.

4. That alternatively intervening Defendants-Petitioners should be granted leave of the Court to intervene in the main action, pursuant to Chapter 110, Paragraph 26.1(2)(b), in that there exists a common question of law in the main action and in Defendants-Petitioners claim, namely the constitutionality of House Bill 1243.

5. That this intervention will neither disrupt the conduct of the action, nor delay or prejudice the right of adjudication of the original parties of the main action.

6. That this Petition for Intervention has been timely filed during the pendency of the main cause and prior to entry of decree.

7. That a copy of a Motion in Intervention to Dismiss the Complaint for Injunction, which Intervening Defendants-Petitioners request as of right, or alternatively, ask leave of this Court to file, is attached hereto, marked Exhibit "A" and incorporated herein by reference.

WHEREFORE, Intervening Defendants-Petitioners pray this Court grant them either the right or leave to intervene in this action and leave to file the proposed Motion in Intervention to Dismiss the Complaint for Injunction and for such other and further relief as this Court may deem proper.

CHICAGO AUTOMOBILE TRADE ASSOCIATION and THE ILLINOIS NEW CAR AND TRUCK DEALERS ASSOCIATION, both Illinois corporations.

By: /s/ DENNIS M. O'KEEFE

Dennis M. O'Keefe,
one of their attorneys

STATE OF ILLINOIS
COUNTY OF COOK } ss:

DENNIS M. O'KEEFE, being first duly sworn on oath, deposes and states that he is one of the Attorneys for the Intervening Defendants-Petitioners, and that he has read the foregoing Petition for Intervention subscribed by him, and that he knows the contents thereof to be true and correct.

/s/ DENNIS M. O'KEEFE

Dennis M. O'Keefe

SUBSCRIBED and SWORN to before me this day of November, 1982

Notary Public

O'KEEFE, ASHENDEN, LYONS & WARD
Attorneys for Intervening Defendants-Petitioners
One First National Plaza
Suite 5100
Chicago, Illinois 60603
(312) 621-0400

APPENDIX G

STATE OF ILLINOIS
COUNTY OF COOK } ss:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—CHANCERY DIVSION

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., an Illinois Corp., CELOZZI-ETTLESON CHEVROLET, INC., an Illinois Corp., and JOHN BYBEE CHRYSLER-PLYMOUTH, INC. an Illinois Corp.,
Plaintiffs,

vs.

JIM EDGAR, Secretary of State of Illinois
Defendant.

No. 82 CH 5692

AFFIDAVIT

NOW COMES your Affiant, ALLEN GAINES, first being duly sworn upon oath, and deposes and states as follows:

1. That he is the President of FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, Inc., an Illinois Corporation, and one of the party Plaintiffs in the subject lawsuit.

2. That he is familiar with the operations of all of the Plaintiff car dealers in this case including FIRESIDE CHRYSLER and has personal knowledge that all of these dealers, along with numerous others in the State of Illinois, have and do operate to a substantial extent on Sundays and rely to a substantial extent on the sales of motor vehicles on Sundays.

3. That in the event that FIRESIDE CHRYSLER or any of the other Plaintiff dealers are unable to operate their businesses on Sundays they will sell substantially fewer automobiles.

APPENDIX H

STATE OF ILLINOIS
COUNTY OF COOK } ss:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—CHANCERY DIVISION

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., an Illinois Corporation, CELOZZI-ETTLESON CHEVROLET, INC., an Illinois Corporation, and JOHN BYBEE CHRYSLER-PLYMOUTH, INC., an Illinois Corporation,
Plaintiffs,

vs.

JIM EDGAR,
Secretary of State of Illinois,
Defendant.

No. 82 CH 5692

REQUEST TO ADMIT FACTS

NOW COME the Plaintiffs FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., an Illinois Corporation, CELOZZI-ETTLESON CHEVROLET, INC., an Illinois Corporation, and JOHN BYBEE CHRYSLER-PLYMOUTH, INC., an Illinois Corporation, by their Attorneys GORDON & GORDON, Ltd., and request that the Defendant JIM EDGAR, Secretary of State of Illinois, admit the following facts:

1. That when House Bill 1243, as an Amendment to the Motor Vehicle Code, Chapter 95½, Paragraph 5-106, becomes effective on January 1, 1983, the office of the Secretary of State of Illinois intends to enforce that law

against any automobile dealer which remains open on a Sunday.

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., an Illinois Corporation, CELOZZI - ETTLESON CHEVROLET, INC., an Illinois Corporation, JOHN BYBEE CHRYSLER-PLYMOUTH, INC., an Illinois Corporation,

/s/

By their Attorneys
GORDON & GORDON, LTD.

Attorneys for Plaintiffs
180 North LaSalle Street
Suite 2505
Chicago, Illinois 60601
322-2490

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FIRESIDE CHRYSLER-PLYMOUTH. etc., *et al.*,
Plaintiffs,
vs.
JIM EDGAR, etc.,
Defendant.

No. 82 CH 5692

DEFENDANT EDGAR'S RESPONSE TO PLAINTIFF'S REQUEST TO ADMIT FACTS

NOW COMES Defendant, Jim Edgar, Secretary of State of Illinois, by his attorney, Tyrone C. Fahner, Attorney General of Illinois and for his Response to Plaintiffs' Request to Admit Facts submits the following:

1. Defendant Edgar admits the assertions contained in paragraph 1.

Respectfully submitted,

/s/ TYRONE C. FAHNER

Tyrone C. Fahner
Attorney General of Illinois
160 N. LaSalle Street
Room 850
Chicago, IL 60601

ROGER P. FLAHAVEN
Assistant Attorney General
General Law Division
793-3738

APPENDIX I

[SEAL]

STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
Springfield 62706

JAMES R. THOMPSON
Governor

FILED
____ AM 1:05 PM July 13, 1982
In The Office of
Secretary of State

To the Honorable Members of The House
82nd General Assembly

Pursuant to Article IV, Section 9(a) of the Illinois Constitution of 1970, I hereby sign House Bill 1243 entitled, "AN ACT to add Section 5-106 to the 'Illinois Vehicle Code, approved September 29, 1969 as amended.'"

House Bill 1243 makes it unlawful to sell automobiles at retail in Illinois on Sunday. The intent of the bill is not religious in nature; rather it was supported in the Illinois General Assembly by substantial members of the automobile retailers in Illinois who argue, alternatively, that the cost of remaining open seven days and nights a week is prohibitive at a time when the trade is suffering under a market decline in sales and high interest rates, and, alternatively, that auto salesmen have no chance, under current market conditions, to enjoy any time with their families or in other private pursuits.

Though I would ordinarily look, and act, with disfavor on a bill of this sort, the arguments of an almost unanimous industry were apparently persuasive to the legislature since the bill passed the House (105-65-5) and Senate (42-11-2) by wide margins.

Since consumers will still have a chance to purchase automobiles six days and nights a week, and since I am informed that all the states which touch our borders have similar prohibitions, and since I am inclined to take any reasonable step that may help an ailing industry, I will, in this

instance, defer to the judgment of the legislature. And while the matter is not free from doubt, my examination of the relevant cases decided by the Supreme Court of Illinois persuade me that the constitutional issue involved is at least an open one.

Sincerely,

/s/ JAMES R. THOMPSON

James R. Thompson
GOVERNOR

Office-Supreme Court, U.S.
FILED
OCT 5 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-342 (2)

In the

Supreme Court of the United States

OCTOBER TERM, 1984

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., *et al.*,
Appellants,

vs.

JIM EDGAR, Secretary of the State of Illinois, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

Motion to Dismiss or Affirm of Appellee Jim Edgar, Secretary of State of Illinois and of Appellee—Intervenors Chicago Automobile Trade Association and the Illinois New Car and Truck Dealers Association

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QUESTION PRESENTED

Appellee and Appellee-Intervenors respectfully suggest that the Question Presented should be rephrased as follows:

Whether a state statute which prohibits the sale of automobiles by licensed dealers on Sundays and which was enacted as part of a comprehensive regulation of the industry in time of economic crisis satisfies the "rational basis test" of traditional Equal Protection Clause analysis.

LIST OF ALL PARTIES BELOW

The parties to this litigation are correctly stated by the Appellants. The Chicago Automobile Trade Association and the Illinois New Car and Truck Dealers Association are non-profit trade associations whose membership is comprised of over 600 and 1,250 franchised new car and truck dealers respectively, constituting the overwhelming majority of such dealers within the state.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

No. 84-342

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., *et al.*,
Appellants,

VS.

JIM EDGAR, Secretary of the State of Illinois, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

Motion to Dismiss or Affirm of Appellee Jim Edgar, Secretary of State of Illinois and of Appellee—Intervenors Chicago Automobile Trade Association and the Illinois New Car and Truck Dealers Association

---

Appellee, Jim Edgar, Secretary of State of Illinois, and the Appellee-Intervenors, the Chicago Automobile Trade Association and the Illinois New Car and Truck Dealers Association, move this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Illinois on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need any further argument.

I.

The State Statute Involved and the Nature of the Case.

A. The Statute

This appeal challenges the validity of Illinois Revised Statutes, ch. 95½, § 5-106 (Supp. 1982).

This statute requires that all new and used motor vehicle dealers in the State of Illinois remain closed "on the first day of the week, commonly called Sunday; . . . ."

B. The Proceedings Below

Appellants commenced this action in the Circuit Court of Cook County, Illinois against Appellee Jim Edgar, the Secretary of the State of Illinois, seeking a declaration that the statute was violative of Article IV, section 13 of the Constitution of the State of Illinois (1970), which forbids the General Assembly to pass a "special or local law when a general law is or can be made applicable." Appellants also contend that the statute violated the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

The Trial Court (Wosik, J.), relying on an earlier case of the Supreme Court of Illinois, *Courtesy Motor Sales* v. *Ward*, 24 Ill.2d 82, 179 N.E.2d 692 (1962), held that the statute violated the Illinois Constitution's prohibition on special legislation. It also held that the statute violated the Equal Protection Clause of the Federal Constitution. (B-1)[1] The Supreme Court of Illinois (Goldenhersh, J.)

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[1] The trial court's inquiry focused on the Illinois prohibition against "special legislation."

reversed the trial court.[2] Noting that, "[i]n recent years the General Assembly has enacted a number of statutes which pertain only to automobile dealers" (A-5), the Court concluded that these statutes "demonstrate a legislative purpose to regulate certain aspects of the business of selling automobiles in a manner different from other retail enterprises. The statute here involved is part of the regulatory scheme. . . ."[3]

II.

The Case Presents No Substantial Question Not Previously Decided by the Court

This Court has "consistently deferred to legislative determinations concerning the desirability of statutory classifications affecting the regulation of economic activity and the distribution of economic benefits." *Idaho Department of Employment* v. *Smith,* 434 U.S. 100, 101 (1977) (per curiam). Such classifications come to this Court with "a presumption of rationality that can only be overcome

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[2] Like the trial court, the Supreme Court of Illinois focused primarily on the state constitutional provision and specifically disapproved of the application of *Courtesy Motor Sales* v. *Ward,* 24 Ill.2d 82, 179 N.E.2d 692 (1962), to this statute.

[3] The Court specifically noted that, in the last several years, the General Assembly has enacted a scheme for the licensing of new and used vehicle dealers, Ill. Rev. Stat. ch. 95½, §§ 5-101, 5-102 (1981), the Motor Vehicle Franchise Act, Pub. Act 81-43, 1981 Ill. Laws 192 (Ill. Rev. Stat. ch. 121½, §§ 751 et. seq., (1981)), and the New Car Buyer Protection Act, Pub. Act. 83-768, 1983 Ill. Laws 5003 (effective January 1, 1984). It has also imposed record-keeping requirements on this industry which are not required of many retailers. *See* Ill. Rev. Stat. ch. 95½, § 5-401 (1981).

by a clear showing of arbitrariness and irrationality." *Hodel* v. *Indiana,* 452 U.S. 314, 331-32 (1981) (citations omitted). Indeed, the Court has repeatedly made it clear that it is not the responsibility of those defending the state statute to shoulder the burden of justifying the classification. Rather, "those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." *Vance* v. *Bradley,* 440 U.S. 93, 111 (1979) (citing *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61, 78-79 (1911)); *accord Schlib* v. *Kuebel,* 404 U.S. 357, 364 (1971); *United States* v. *Maryland Savings-Share Insurance Corp.,* 400 U.S. 4, 6 (1970) (per curiam). Indeed, absent such an explicit showing by those seeking judicial frustration of the legislative intent, the Court has concluded that the legislature *"could* have concluded rationally that" certain facts were true which would support the legislative judgment. *McGinnis* v. *Royster,* 410 U.S. 263, 274 (1973) (emphasis supplied); *see also Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 487 (1955). "[T]he law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." *Williamson,* 348 U.S. at 487-88.

Here, unlike the situations in *McGinnis* and *Williamson,* it was not necessary for the state courts—nor is it necessary for this Court—to speculate as to the economic and social difficulties perceived by the legislature and the Governor at the time of the passage of this legislation. The automobile industry constitutes a major seg-

ment of the Illinois economy, and, at the time of the passage of this legislation, it suffered from a severely depressed market for new automobiles and trucks. In such an economic atmosphere, the already highly competitive nature of the industry became even more intense. Many dealers, knowing their survival depended on retaining their share of an ever-shrinking market, remained open seven days and nights a week despite the prohibitive costs associated with such scheduling. Salesmen, working on a commission basis, dared not absent themselves whenever their showroom was open. They had to work for unreasonably long hours and reaped meager return for their effort. Meanwhile, their private activities—including their family lives —suffered significantly.[4] The

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[4] Automotive News, a respected national trade publication, reported new car registrations, based on an R. L. Polk and Co. statistical report, had decreased from 8,443,919 to 7,754,342 from 1981 to 1982 (Copyright, 1983, Automotive News). Furthermore, the National Automobile Dealers Association reported that the number of franchised new car dealers in the greater Chicagoland region dropped from 579 on January 1, 1980 to 490 on January 1, 1983.

Neither the appellants nor the appellees suggest that the purpose of this statute was to accommodate the religious needs of the salesmen. Nor do they contend that its effect is to aid religion. This case does not, therefore, raise the issues presented in *Thornton* v. *Caldor, Inc.*, 191 Conn. 336, 464 A.2d 785 (1983), *cert. granted,* 104 S.Ct. 1438 (1984) (No. 83-1158), now *sub judice.* Nor is the purpose of this statute to create a common day of rest. Therefore, appellants' reading of *McGowan* v. *Maryland,* 366 U.S. 420 (1961), Jurisdictional Statement at 13, even if it is correct, is irrelevant. Actually, *McGowan* and its companion cases support our basic contention that a "statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

Governor while expressing his view that, as a general rule, he did not approve of legislation placing special restrictions on one industry,[5] nevertheless stated that, given the economic and social situation before him, such legislation was indeed necessary.

The rationality of the approach taken by the Governor and the General Assembly of Illinois finds support in the approaches of other states. In upholding the constitutionality of a Sunday Closing statute which singled out the same industry, the Supreme Court of Indiana wrote:

> [A]s to the manner in which the business is conducted, we know that each manufacturer makes the maximum number of cars which he believes the market can consume and ordinarily changes the models

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[4] (Continued)
Id. at 426. Of course, a state may apply a more stringent standard. *See, e.g. Rutledge* v. *Gaylord's, Inc.,* 233 Ga. 694, 213 S.E.2d 626 (1975); *Skag-Way Department Stores, Inc.* v. *City of Omaha,* 179 Neb. 707, 140 N.W.2d 28 (1966); *County of Spokane* v. *Valv-Mart, Inc.,* 69 Wash. 2d 712, 419 P.2d 993 (1966).

We also fail to see the relevance of the appellants' suggestion that the statute is anticompetitive. It regulates the entire state industry in an evenhanded manner. The state courts found no conflict with any other state policy nor was it ever seriously contended in the courts below that the statute contravened any federal policy.

[5] The Governor's remark that the constitutionality of the statute was "not free from doubt" was apparently based on the "special legislation" provision of the Illinois constitution. He specifically noted that his conclusion was based on an "examination of the relevant cases decided by the Supreme Court of Illinois." In any event, he was ultimately persuaded that the issue, even with respect to the state constitutional provision, was "an open one."

each year, thus making it necessary for franchised dealers to sell such cars within the year of the model or suffer serious loss.

• • •

Because of this highly competitive situation and because of the fact that the automobile is a high-priced article, with limited numbers of buyers, the operation of such retail business on Sunday by any substantial number of dealers forces other dealers to operate on Sunday regardless of their personal desires in order to maintain their competitive positions. During recent years it is common for many of such businesses to operate not less than 12 hours per day during the week and not less than eight to ten hours on Sunday. Salesmen for such establishments are customarily employed upon a commission basis only, which arrangement almost compels them to work whenever the establishment is open and especially on Sunday when special appeal is made for customer traffic.

• • •

. . . . Because of the character of the business and the manner in which it is conducted, those who would prefer not to operate on Sunday find themselves almost compelled to do so in order to maintain their competitive position and all who operate on Sunday do so under mental and nervous pressure.

Tinder v. *Clarke Auto Co.*, 238 Ind. 302, 316-18, 149 N.E. 2d 808, 815-16 (1958). Chief Justice Vanderbilt of New Jersey was even more blunt:

In the present state of Sunday activity in this automotive age, there are sections of our highways stretching for miles almost exclusively devoted to the sale of new and used cars, where the owners and employees, forced by the unreasonable and competitive lust of some of their neighbors in the trade, are compelled to maintain their business vigil every

> day of the week and for long hours; who can say that this is not inimical to the public good?

Gundaker Central Motors v. *Gassert,* 23 N.J. 71, 82, 127 A.2d 566, 572-73 (1956), *appeal dismissed* 354 U.S. 933 (1957).[6]

Whether the legislature and the Governor were correct in their estimation of the situation confronting Illinois is not for this or any other Court to decide. *Vance* v. *Bradley,* 440 U.S. 93, 111-12 (1979). Similarly, whether the means chosen to eradicate the problem in fact promoted the legislative purpose is not subject to judicial second-guessing. It is sufficient that the legislative distinction "rationally promote[s] the regulation's objectives." *County Board* v. *Richards,* 434 U.S. 5, 7 (1977) (per curiam); *see also Exxon Corp.* v. *Governor of Maryland,* 437 U.S. 117, 124-25 (1978) (due process context). Similarly, it is not relevant that the legislature did not, at the time it chose to address the problems of the auto industry, also address similar problems in other parts of the state's economy. As Justice Frankfurter noted in his now-vindicated dissent in *Morey* v. *Doud,* 354 U.S. 457, 472 (1957): "'Legislation which regulates business may well make distinctions depend upon the degree of evil.'" *Id.* at 475 (quoting *Heath & Milligan Manufacturing Co.* v. *Worst,* 207 U.S. 338, 355-56 (1907)). "[E]very line drawn by a legislature leaves some out that might well have been included. That exercise of discretion, how-

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[6] Other states have upheld similar statutes. *Diamond Auto Sales, Inc.* v. *Erbe,* 105 N.W.2d 650 (Iowa 1960); *Mosko* v. *Danbar,* 139 Colo. 172, 309 P.2d 581 (1957); *Irishman's Lot, Inc.* v. *Cleary,* 338 Mich. 662, 62 N.W.2d 668 (1954); *Stewart Motor Co.* v. *City of Omaha,* 120 Neb. 776, 235 N.W. 332 (1931).

ever, is a legislative, not a judicial, function." *Village of Belle Terre* v. *Boraas,* 416 U.S. 1, 8 (1974) (footnote omitted). Unless the distinction is "patently arbitrary or irrational," *U.S. Railroad Retirement Board* v. *Fritz,* 449 U.S. 166, 177 (1980), the judgment of the legislature must be sustained. This case is a particularly poor candidate for heightened judicial scrutiny since the state supreme court found that, as a matter of state law, this statute is part of a broader regulatory scheme enacted to meet the particular conditions of the motor vehicle sales industry in Illinois. The determination by the Supreme Court of Illinois that such a regulatory scheme exists is, of course, binding on this Court. *Missouri* v. *Hunter,* 103 S.Ct. 637, 679 (1983).

This Court has, in recent times, been faced with other invitations to deviate from the established analysis and to assume a more activist role in second-guessing the judgments of state legislatures. It has firmly rejected such invitations. Indeed, in *City of New Orleans* v. *Dukes,* 427 U.S. 297 (1976) (per curiam), it specifically overruled *Morey* v. *Doud,* 354 U.S. 457 (1957), "the only case in the last half century to invalidate a wholly economic regulation solely on equal protection grounds." 427 U.S. at 306. The appellants urge, in effect, that this Court return to the days of *Morey* v. *Doud.*[7] Such an

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[7] *Morey* v. *Doud,* 354 U.S. 457 (1957), although understandably now cited by appellants in light of its explicit overruling in *City of New Orleans* v. *Dukes,* 427 U.S. 297 (1976) (per curiam), lends some support to their position. There, the Court struck down as violative of the Equal Protection Clause an exemption for the American Express Company from the provisions of the Community Illinois Currency Exchange Act.

approach would turn equal protection analysis into, to borrow Justice Rehnquist's description from the somewhat parallel context of irrebuttable presumption analysis, "a virtual engine of destruction for countless legislative judgments which have heretofore been thought wholly consistent with the Fifth and Fourteenth Amendments to the Constitution," *Weinberger* v. *Salfi*, 422 U.S. 749, 772 (1975).

Conclusion

Wherefore, Appellee and Appellee-Intervenors respectfully submit that the question upon which this cause depends is so unsubstantial as not to need further argument, and they respectfully move the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Illinois.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 1984, 3 copies of this motion to dismiss or affirm were mailed, postage prepaid, to Clark M. Clifford, 815 Connecticut Avenue, N.W., Washington D.C. 20006. I further certify that all parties required to be served have been served.

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No. 84-342

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., *et al.*,
Appellants,

vs.

JIM EDGAR, Secretary of the State of Illinois, *et al.*,
Appellees,

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

APPELLANTS' REPLY TO APPELLEES' MOTION TO DISMISS OR AFFIRM

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Appellant corporations have no parent companies, subsidiaries, or affiliates.

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Appellees,

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

APPELLANTS' REPLY TO APPELLEES' MOTION TO DISMISS OR AFFIRM

ARGUMENT

The issue presented in this appeal is whether a legitimate legislative purpose is served by a state statute whose declared aim is to restrain trade in order that certain influential competitors might benefit financially. Nothing in appellees' Motion to Dismiss or Affirm ("Motion") alters the nature of the issue, or suggests that the statute's patently improper exercise of governmental power in fact serves a legitimate public interest. The Illinois statute thus fails to satisfy the requirements of the Due Process and Equal Protection Clauses and is unconstitutional.

Appellees' Motion is most notable in its failure to confront the key constitutional deficiencies which warrant reversal of the Illinois judgment before the Court on appeal. Nowhere, for

example, do appellees discuss the requirement that legislation, the effect of which is to restrain competitive activity, must serve a legitimate purpose in order to be constitutional. Indeed, their abbreviated discussion of the constitutional standard suggests that the legitimacy of a state's purpose in enacting legislation is not even a question subject to judicial review. *See* Motion at 8. So restrictive a view of the Court's enforcement of the Due Process and Equal Protection Clauses is inaccurate. *See, e.g., Zobel* v. *Williams,* 457 U.S. 55 (1982). *See also* Jurisdictional Statement at 9-12. Even in the economic arena, the exercise of state legislative power is limited to purposes which are both legitimate and public. It is only upon the articulation of such a valid state aim that the constitutionality of a state statute can be upheld.[1]

Appellees' Motion also fails to confront the affirmatively improper purpose which is the declared aim of the Illinois statute. As a preliminary matter, appellees agree that the constitutionality of the statute must be judged in light of the legislative purposes set forth in Governor Thompson's July 13, 1982 message to the legislature. *See* App. I. As it is not necessary in this case for the Court to "speculate" as to the statute's aims, Motion at 4, the Court's constitutional inquiry is narrowed to and focused upon the blatantly anticompetitive purposes which were the source of such obvious concern to the Governor.[2]

The statute's affirmatively illegitimate goal of restraining trade receives only a brief footnote reference in which appellees

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[1] *County Board* v. *Richards,* 434 U.S. 5 (1977), cited by appellees in support of their novel theory of constitutional review, is itself a case in which the constitutionality of a regulation was upheld only after its purpose was expressly found legitimate by both the state supreme court and this Court. *Id.* at 6-7.

[2] Appellees' systematic mischaracterization of the Governor's statement, although unnecessary to their argument, warrants clarification. Far from finding the statute "indeed necessary", Motion at 6, Governor Thompson expressed his concerns about the statute while choosing to "defer" to the judgment of the legislature. *See* App. I at I-2. Moreover, appellees' curious discussion of the Governor's doubts as to the constitutionality of the statute is speculation finding no support in the record. *See* Motion at 6 n.5.

state that they "fail to see the relevance of appellants' suggestion that the statute is anticompetitive." Motion at 5-6 n.4. The relevance, of course, lies in the fact that restraint of trade, without even the assertion of a valid public interest, is the Illinois statute's sole reason for being and is an illegitimate state purpose. *See* Jurisdictional Statement at 9. Appellees do not dispute that constitutional judgment, but assert only that as to the Illinois statute the lower courts "found no conflict with any other state policy nor was it ever seriously contended in the courts below that the statute contravened any federal policy." Motion at 6 n.4. It is true that the Illinois Supreme Court's majority failed to consider the purposes of the statute and whether those purposes are consistent with other state and federal policy norms. But that can hardly be a source of comfort to appellees. Instead, the court's failure to determine what the statute's purposes were and whether or not they were legitimate only dramatizes the patent inadequacy of the opinion now on appeal.[3]

The bulk of appellees' argument on the merits is aimed at describing the economic downturn which purportedly prompted the restraint of trade.[4] Whether motivated by a temporary decline in sales or by some other factor, however, the illegitimacy of the legislative purpose remains the same.[5] A state may not constitutionally eliminate competition in order that those who do not want to compete may be protected by the

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[3] The minority addressed the statute's anticompetitive aims directly, concluding that they were inconsistent with settled state and federal policy judgments and thus improper. *See* App. A at A-15.

[4] Although relying upon the case in their briefs before the Illinois Supreme Court, appellees now characterize as "irrelevant" *McGowan* v. *Maryland*, 366 U.S. 420 (1961), and other cases in which the creation of a general day of rest has been found to constitute a legitimate state interest. *See* Motion at 5 n.4. The constitutional analysis embodied in *McGowan* and its progeny, however, demonstrates that Sunday closing laws limited to a single trade are presumptively invalid. *See* Jurisdictional Statement at 13-14.

[5] Aside from its irrelevance, appellees' belated attempt to document their claims, *see* Motion at 5 n.4, was not presented to either of the courts below and is not in the record on appeal. The record in the courts below does, however, contain documentation of the dramatic increase in automobile sales beginning in the first half of 1983. *See, e.g.*, App. A at A-13.

state from the consequences. Appellees in this Court say nothing to dispute, in the words of the Illinois Supreme Court minority, "what the Secretary of State appears to admit is the real reason for the Sunday closing law in this case, to increase the profitability of the automobile sales business by decreasing competition and reducing the availability of its product." *Fireside Chrysler-Plymouth, Mazda, Inc.* v. *Edgar,* App. A at A-15 (Opinion of Justices Simon and Underwood). No valid public interest has been asserted in support of the Illinois statute and the act should accordingly be found unconstitutional.

With no legitimate public purpose served by the Illinois statute, appellees attempt to borrow strength from other statutes whose constitutionality was upheld by state courts in opinions predating *McGowan* v. *Maryland.* *See* Motion at 6-8. Whether or not those other statutes were enacted to serve a legitimate state purpose, however, has no bearing on the question before this Court. Indeed, having sought to justify the statutory inhibition of competitive activity on the basis of an economic downturn which occurred in the early 1980's, appellees can hardly rely upon different legislative purposes formulated in other jurisdictions more than twenty years before.

Appellees also seek shelter from review in the assertion that this Court is bound by the Illinois Supreme Court's "determination" that the Sunday closing law was one of a number of state regulations specifically directed toward automobile dealers. *See* Motion at 9. Even if that assertion is so, the *constitutionality* of the state statute is not a question foreclosed by the state court's finding. *See Missouri* v. *Hunter,* 459 U.S. 359, 368 (1983). Equally important, the existence of other Illinois statutes relating to automobile dealers is irrelevant to the constitutional issue presented in this case. The fact that dealers are properly regulated for some purposes does not mean that regulation of them for *any* purpose is legitimate *per*

se. Only the Sunday closing statute is before the Court on appeal, and unless it serves a legitimate state purpose that statute must be found unconstitutional.

Respectfully submitted,

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